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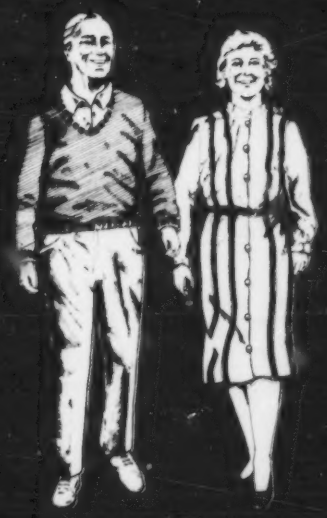

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LEGAL RIGHTS OF OLDER PERSONS

UNDERSTANDING AND WORKING WITH OLDER PEOPLE

ACKNOWLEDGEMENTS

We would like to thank all the people who assisted with the development and production of this booklet Legal Rights of Older Persons. The text was researched and written by Joan Riddle of the Legal Resource Centre, Faculty of Extension, University of Alberta. It was up-dated and the section on Elder Abuse researched and written by Sylvia Tensfeldt, a sole practitioner. Particular thanks go to Marsha Mildon for editorial assistance; Margaret Ferguson for consultation on the text; Grant Kayler and Joanne Walker for research assistance; Karen Moody, Julia O'Hara and Carol Toth for typing and word processing; and Mary Davis for assistance and encouragement throughout the entire process.

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LEGAL RIGHTS OF OLDER PERSONS

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1. INTRODUCTION

The legal rights of older persons are no different than those of anyone else. However, there are some areas of the law which may be of more interest and more relevance to older people. This booklet is designed to cover those areas. It is written using questions which older people might ask and providing answers easily understood by people without legal training. It is not intended to replace a lawyer and we suggest that for any legal problem you encounter you consult a lawyer. We also wish to remind readers that while we have attempted to be both up-to-date and accurate, the law changes constantly.

There is a list of additional materials at the end of each section. The list is not intended to be comprehensive. It includes those materials which we have found to be both useful and readily available. Materials listed include books, pamphlets and audio-visuals. As the majority of pamphlets do not provide an exact date of publication, the date that has been provided is only approximate.

2. AGE DISCRIMINATION

There are in force three pieces of legislation which make discrimination on the basis of age illegal in certain circumstances. They are the Canadian Human Rights Act, the Alberta Individual's Rights Protection Act, and most importantly the Charter of Rights and Freedoms contained in the Constitution Act, 1982.

Under Alberta's legislation "age" is defined as "any age of 45 years or more and less than 65 years". However, even though this legislation limits the ages where discrimination is illegal, the enactment of s.15 of the Charter in 1985 has placed the validity of this type of provision into question. A very recent British Columbia decision dealt with a similar provision in their human rights legislation. British Columbia deemed the provision to be in violation of s.15 of the Charter and therefore void. It is probable then that a change to the Alberta legislation in the near future will also occur.

There is no similar age definition under the Canadian Human Rights Act and certainly no such limitation under the Charter.

When does the Charter apply?

The Charter applies to all government legislation and government operated businesses and institutions. "Government" includes the federal and provincial governments and any municipal or lower authorities or boards. All forms of government and related bodies must make laws and conduct their business affairs in such a way as not to violate the rights contained in the Charter, and in particular, s.15 equality rights.

Unfortunately, the Charter does not apply directly to dealings between private citizens. However, it will influence Alberta legislation, in particular, the Individual's Rights Protection Act. As previously noted, this Act affects all citizens, whether in government or private industry. Therefore, ultimately the influence of s.15 on our province's laws will filter down and affect the actions of private corporations and citizens so that age discrimination without reasonable justification, will be illegal in all areas. For example, the Charter could force a change by eliminating the definition of "age" under the Act, so that any form of age discrimination would not be permissible. Private individuals and businesses will then change the way they conduct their affairs.

When does the Canadian Human Rights Act apply?

The Canadian Human Rights Act applies to those matters over which the federal government has the power to make laws. This means the Act would apply to discrimination problems in the federal public service, the air industry, and the postal service, to name a few. For example, whether or not an airline pilot can be forced to retire at the age of 60 is a question which comes within the jurisdiction of the Canadian Human Rights Act.

When does Alberta's Individual's Rights Protection Act apply?

Alberta's Individual's Rights Protection Act applies to those matters over which the province has the power to make laws. The Act, therefore, applies to discrimination problems in the provincial and municipal civil services, hospitals, universities, schools, and so on. For example, Mary Gadowsky, an elementary school teacher in the County of Two Hills in Alberta was put in a position by her employer where she felt she had been forced to retire. The County was faced with budget restraints and decided to eliminate Mrs. Gadowsky's position since she was closer to retirement age than any of the other teachers. She was 62. Although the County offered her various other options, none was appropriate. Retirement was the only choice left. The court found that there had been unlawful discrimination against Mrs. Gadowsky because of her age. They awarded her damages in the amount that she would have earned had she continued teaching until her retirement at age 65.

How do these Acts protect against discrimination?

The Alberta Individual's Rights Protection Act makes it illegal to discriminate on the basis of age in public signs and notices, job applications, job advertisements, and employment practices.

The Charter and the Canadian Human Rights Act make it illegal to discriminate on the basis of age for any purpose.

Are there any exceptions to these protections?

Under the Individual's Rights Protection Act, the prohibition against discrimination on the basis of age in employment practices does not apply to retirement plans, pension plans, and employee insurance plans. This means that people of a certain age may not be eligible to contribute to one of these plans since they often require a minimum number of years of contribution before the employee is entitled to benefits. The situation is similar under the Canadian Human Rights Act. This is unlikely to change under the Charter.

The protection in both the provincial and federal Acts also does not apply where age is a "bona fide occupational requirement". This covers the situation where a potential employee is a minor or is of retirement age. It also applies where a job is one which could only be performed by a person of a certain specified age. This will undoubtedly continue under the Charter as a just and reasonable exception and therefore an allowable form of discrimination. This is particularly so in light of s.1 of the Charter which allows for violation of its other provisions where it can be shown to be a justified limitation of a right. Therefore mandatory retirement policies may be enforceable in some industries or businesses and not found to be discriminatory where it is a reasonable occupational requirement.

The Individual's Rights Protection Act also does not apply in employment matters relating to domestics working in private homes or to farm workers living in the farmer's home. This may come into question in future because of the Charter but has not yet been addressed.

Can I be forced to retire?

This question has recently been placed before various boards and courts in several provinces in relation to the Charter provisions. In a recent Alberta Board of Inquiry decision dealing with the University of Alberta and one of its professors, it was determined that a mandatory retirement provision contained in a collective agreement was in violation of s.15 of the Charter and that the Employer's criteria for justifying the provision did not meet the test of being "demonstrably justified" when compared to the injustice caused by the curtailment of the Employee's rights by the provision. There are further decisions from other provinces that indicate mandatory retirement at age 65, as a general rule, is discriminatory, unless the employer can show evidence why it is just and reasonable to insist on retirement at a specific age.

However, all the decisions are in relation to government run businesses and therefore, the same rules may not yet apply to private industry. Therefore, mandatory retirement is still possible in private industry and in some types of industry.

How will Canada's new Constitution affect this question of age discrimination?

The full effect of Canada's new Constitution on Alberta's Individual's Rights Protection Act and the Canadian Human Rights Act will not be known until the Constitution has been in effect for some time. The equality section of the Charter, s.15, only came into force in April of 1985. The equality rights section is the one which prohibits discrimination on the basis of age, among other things. It reads as follows:

> Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

The courts have only recently begun to render decisions on cases which rely on this section. The few decisions which have been made however, clearly indicate that age discrimination, particularly in relation to mandatory retirement, is a violation of the Charter's right of equality. The next few years will undoubtedly see a great many more decisions as to equality rights in relation to age. Therefore, no firm answer can yet be given.

What can I do if I have been discriminated against because of my age?

If you feel you have been wrongfully discriminated against because of your age, you can make a complaint to the Alberta Human Rights Commission or the Canadian Human Rights Commission. In Edmonton they have the following locations.

Alberta Human Rights Commission
Information and Complaints
Edmonton Regional Office, Rm. 802
10011 - 109 Street
Edmoton, Alberta
T5J 3S8
Tel: 427-7661

Canadian Human Rights Commission
#401, 10506 Jasper Avenue
Edmonton, Alberta
T5J 2W9
Tel: 420-4040

In Calgary the Alberta Human Rights Commission is located at

Alberta Human Rights Commissio
Calgary Regional Office, Main Floor
1333 - 8 Street S.W.
Calgary, Alberta
T2R 1M6
Tel: 297-6571

ADDITIONAL MATERIALS

1. BOOKS

AGE DISCRIMINATION IN CANADA. By Thomas E. Flanagan. (Occasional Papers Series Research Study 1.3). Calgary: University of Calgary, 1985

EQUAL OPPORTUNITIES IN EMPLOYMENT: A HANDBOOK FOR EMPLOYERS. Peter S. Tong. Alberta Human Rights Commission. Edmonton: The Commission, 1981.

2. PAMPHLETS

(a) ALBERTA HUMAN RIGHTS COMMISSION. Edmonton: Alberta Human Rights Commission, 1987.

(b) CANADIAN CHARTER OF RIGHTS AND FREEDOMS: FUNDAMENTAL FREEDOMS AND DEMOCRATIC RIGHTS. By Public Legal Education Activities of Manitoba, and Joseph Marino. Winnipeg: Public Legal Education Association, 1985.

(c) CANADIAN HUMAN RIGHTS ACT: A GUIDE. By Canadian Human Rights Commission. Ottawa: The Commission, 1984.

3. OWNERSHIP OF PROPERTY

Because we all own some property, we tend to take the concept of property ownership for granted. We buy something or are given something, and it becomes ours. We have the right to use it, keep it, lend it, sell it, pledge it for credit, or give it away. And although such matters are usually quite simple and straightforward, more complex issues can arise. This section of Legal Rights of Older Persons will attempt to highlight some of the basic concepts of property ownership and their consequences.

What is Property?

Personal Property. Real Property. What are they? What are the differences between them?

During the various stages of our lives we become property owners. The property we acquire can be anything from a toaster to a T.V., a car or a home. The terms personal property and personalty refer to anything which is not land and which is not attached to land. It is into this category that the toaster, T.V., and car fit. Such possessions are also referred to as chattels. Real property and realty refer to land and all those things which are affixed or attached permanently to the land. This includes buildings, fences, sidewalks, and anything else which, if removed, would disturb the land or leave it in an altered state.

What are the Rights of Ownership?

Lawyers often speak of a bundle of rights associated with owning property -- a sort of pick-up-sticks assortment of rights such as to use and enjoy something owned by renting, lending, selling or giving it away: to borrow against the value of something owned; and to pass the thing owned on to an heir. These rights generally are all rights of the 'owner', but are best thought of as a bundle because they can, in fact, be separated. For example, if you 'own' a house, you may borrow against the value of the house, thus giving the bank or mortgage company certain rights to the value of the house, such as to take over ownership if the mortgage is not repaid. You may also lease or rent your house to someone else, thus giving the tenant the right to use and enjoy the property.

However, your rights, even as sole owner are not necessarily absolute. In the case of 'real property', the state retains certain rights, such as the right to tax your land, the right to expropriate it, the right to control development on your land, and so on. This is because the modern concept of ownership of property has evolved to the point where recognition is given to both the rights and duties of the property owner, and the interests of society in the appropriate utilization and conservation of land and other resources.

HOW IS PROPERTY OWNED?

The rights of ownership to a particular piece of real or personal property may belong either to one person or to two or more persons together.

If you own property by yourself, it is sometimes referred to as sole ownership. You have the right to dispose of the property to whomever you choose. This can be done either during your lifetime or it can be done by your will.

What if more than one person owns the Property?

There are two different ways in which you can own property with one or more other persons -- tenancy in common or joint tenancy. Under a tenancy in common you own an undivided portion of the property: in other words, if you owned a house with your spouse, you would own a one-half interest in that house. Under a joint tenancy, you have the same right of ownership to the whole property as do the other joint owners: in other words, in this case if you owned a house with your spouse you would own the whole house as would your spouse.

A word of caution is perhaps necessary at this point. Some confusion can exist where land is held in the names of two people. The title to the land must be examined in order to determine how the land is held. On land titles in Alberta, a title held by joint tenancy will read "John Doe, of the City of Edmonton, and Mary Doe, of the City of Edmonton as joint tenants", whereas a title held by tenancy in common would read "John Doe, of the City of Edmonton, and Mary Doe, of the City of Edmonton, as tenants in common, as to each an undivided one-half interest". In other words, until you examine the land title of a piece of land owned by two or more persons, you cannot make any assumptions about the way it is held. Personal property may also be held jointly or in common, but title does not usually provide an obvious answer as to which type of ownership is involved.

The difference between these two ways of owning property with others is important to your right to pass on your property to your heirs.

1. What happens to our property when one of us dies?

Under a tenancy in common, when you die, your portion of the property is passed to your heirs. The other owner retains ownership of his or her original undivided portion.

Under a joint tenancy, when you die, your share ceases to exist. The surviving owner(s) becomes the owner of the whole property. This right of the surviving owner(s) is called the right of survivorship. It exists only with respect to joint tenancies. Because of this right, if you are a joint tenant, you do not have the right to dispose of your interest in the property by your will, as you would if you were a sole owner or a tenant in common.

2. When is the right of survivorship important?

(a) When property is owned by members of the family

When property is owned by two or more members of a family (for example, you and your spouse or you and your children) and it is intended that the property is to pass to your surviving spouse or children, a joint tenancy is advantageous. It eliminates the need to provide in your will for the transfer of the property and, therefore, decreases the cost of administering your estate. This is because any property jointly held by the deceased and the surviving spouse or offspring automatically passes to the survivor and by-passes the estate.

Estate planning becomes more complex, however, where the estate is a large one. Tax implications become a much more significant, if not the most significant, consideration. A discussion of the tax implications of estate planning is beyond the scope of this booklet and it is suggested that the advice of an experienced tax accountant or tax lawyer be obtained.

(b) When property is owned by business partners or friends

If you own property with two or more business partners or with two or more friends, it is probably held by tenancy in common. This allows each of you to pass your interest in the property to your heirs. For example, if you own a summer cabin or ski chalet with a business partner or a friend, you will be able to pass your interest in the property on to your spouse or children when you die. If you owned the cabin by joint tenancy, your share would automatically go to your partner or friend when you die. An attempt to pass an interest in property held by joint tenancy by your will is not a valid disposition and will only result in unhappy and 'property-less' heirs.

(c) When property is owned with your spouse and your marriage breaks down

There can be problems when spouses owning property as joint tenants decide to separate. Regardless of the marital status of joint owners, the right of survivorship still exists and will still apply. Therefore, if you own property by joint tenancy with your spouse, and if you decide to separate or divorce, it is important to change the joint tenancy to a tenancy in common if it is desired that the right of survivorship be ended.

(d) When the property is a joint bank account

A joint bank account is another example of property which will pass automatically to the survivor without becoming part of your estate. You may, for example, have a joint account with your spouse or with one or more of your children. If one of you dies, the other will still have access to the account. This ensures a continued supply of cash for day to day living expenses. However, it is very important that the bank account be clearly set up as a joint bank account. In the situation where an account is owned by one of you and the other spouse merely has signing authority, the account will likely not be seen as a true joint account and the money in it will have to be administered as part of the deceased's estate. In some circumstances, the bank account may be frozen with the exception of $1000 or $2000. The bank will then wait until the estate has been probated, and until it has been determined how much of the bank account belonged to the deceased and how much belongs to the surviving spouse. The amount belonging to the deceased will then be administered as part of the estate. It should be pointed out that the matter of joint bank accounts is a confusing one at the best of times and you should, therefore, check at your bank to find out the exact status of your account.

What happens to my house mortgage or car loan when one of us dies?

House mortgages and chattel mortgages are commonly used for large purchases such as homes and cars. A mortgage is security for payment of the money which was borrowed to buy the property. It operates as a charge or lien against the property and exists until the debt is repaid. Repayment of the debt is the responsibility of the person or persons who signed the mortgage.

Questions of repayment can arise when a borrower dies. What happens to the property? Who has to repay the loan?

In the situation where there are two borrowers, for example, you and your spouse, the surviving spouse is responsible for repayment. In the situation where you are the only borrower and you die, the debt still exists and must be repaid from your estate. In both cases the debt continues to exist as a charge against the property. If it cannot be repaid the mortgage will be foreclosed. This usually means that the property is sold with the proceeds being used to repay the loan. Any surplus goes to your estate.

Sometimes, however, mortgages are life insured. When you or your spouse dies, the proceeds of the insurance policy are used to repay the loan. There is no responsibility for repayment on the part of a surviving spouse/borrower or the estate. The property is free of any charges there may have been against it. If your home is mortgaged, it may be important to check whether your mortgage is life insured, and whether the insurance covers both you and your spouse.

Who owns a Gift?

Questions about who owns property can arise when circumstances indicate that a gift was intended. For example, as a husband, you might provide the money to buy a second car, but register that car in your wife's name. In such a situation, the courts presume that you intended your wife to benefit by having the car and that she is, consequently, the owner of the car. This is called the presumption of advancement. It applies to situations in which the person providing the purchase money is under an obligation to support or provide for the person for whom the property was purchased. The presumption is most commonly applied where a husband purchases property in his wife's name, or where a father purchases property in the name of a son or a daughter. The presumption will not be applied when there are circumstances which indicate that a gift was not intended. For example, if you only intended that your spouse or son or daughter keep the property in trust for you, the presumption will not be applied. It should be pointed out that the presumption in favour of a wife has been somewhat weakened due to the reduction of a wife's economic dependence on her husband in our present society.

The presumption will also not be applied in cases of marriage breakdown. Alberta's Matrimonial Property Act governs how property is to be distributed when a marriage ends. This Act specifically excludes the application of the presumption of advancement.

CAN ANYONE ELSE MAKE DECISIONS ABOUT MY PROPERTY?

As we pointed out at the beginning of this section, you, as owner, have a bundle of property rights which you may hold alone or which you may share with others.

In certain circumstances, particularly when an owner's mental or physical health is impaired, it can be useful for someone else to be able to exercise the owner's property rights. This is usually done by granting a 'power of attorney' or by using the provisions of the Dependent Adults Act.

What is a power of attorney?

A power of attorney has been defined as an authority, usually in writing, given by one person to another to do certain specific acts in the name of the person who has granted the power. You can restrict the power to one particular matter, for example, the sale of a house, or you can grant power of a more general nature, for example, the power to handle all your financial affairs. In general, you can grant any powers that you possess.

For example, suppose you owned a ski chalet which you were no longer able to use or even visit, and you wanted money for some other purpose, it would be very useful to have a son, daughter or friend sell the chalet for you. This could be done by granting that person a power of attorney to sell the chalet.

If you grant the power of attorney, you are called the principal, and the person to whom the power is granted is called the agent. Your relationship is governed by the rules of agency. One important rule of agency is that you are bound by the acts of your agent, as long as the agent acts within the powers you granted. In other words, if you granted your son the power to sell the ski chalet, and he did so, you could not change your mind or claim he didn't get a good enough price, etc. Another important rule of agency is that you can only grant powers which you possess. In other words, you cannot authorize the agent to do something which you cannot do. For example, you cannot authorize the agent to sell a car which you don't own.

A power of attorney is often used when, as you grow older, you can no longer conveniently handle your financial and other affairs. In this situation, a son or daughter is usually granted a power of attorney. However, you may grant the authority to act on your behalf to whomever you choose.

A power of attorney can be terminated in three ways. First, you can end it verbally or in writing. Second, if you die, the power of attorney terminates immediately. Third, if you become mentally incapacitated to the extent that you can no longer enter into contracts, the power of attorney ends. Although there is some argument on this point, the law suggests that an agent cannot do something which the principal does not have the capacity to do.

Where does the Dependent Adults Act fit in?

An authority for one person to handle the affairs of another also arises under the Dependent Adults Act. This Act provides for two situations where the affairs of an individual (the dependent adult) can be handled by a person appointed under the Act. The Act provides for the appointment of a guardian to handle the personal affairs of a dependent adult, and a trustee to handle the financial affairs of a dependent adult (see part 9, The Dependent Adults Act.

WHAT RIGHTS DO I HAVE IF I RENT PROPERTY?

Both real property and personal property can be the subject of a lease or rental agreement. For example, apartments and houses are often leased (or rented), as are televisions, cars, and furniture. A lease can be for any length of time to which the parties agree. It can also vary considerably in its other terms. It can be very restrictive, giving you as lessee (renter) very few rights over the property, or it can be very broad, giving you almost as many rights as an owner would have.

The legal principles which govern lease and rental agreements are a mixture of property law and contract law. Because of this, it is very difficult to make general statements about consequences that might flow from rental or lease agreements. In each case the agreement itself must be

examined. In situations where the agreement does not appear to deal with a particular problem, legal advice should be sought. If you are leasing (renting) the place where you live, the Landlord and Tenant Act gives both you and the landlord certain rights. These are described in more detail in part 4, Housing Law. There are also several booklets available to give you information on your rights as a tenant or landlord. In addition, you may wish to contact the Landlord and Tenant Advisory Board, if one has been set up in your municipality (see part 4, Housing Law).

CONCLUSION

While we may not think too seriously about the clock radio on the bedside table, or the cabin at the lake, the ownership of these properties may have serious implications when the rights of ownership to them are affected by the state of your mental or physical well-being or the imminence of death. It is hoped that this explanation of property rights has helped you gain a better understanding of some of the more important consequences which flow from the ownership of property.

ADDITIONAL MATERIALS

1. BOOKS

CANADIAN REAL ESTATE. By Richard Steacy. 7th ed. Toronto: Stoddart Publishing Co. Limited, 1987.

REAL ESTATE BUYING/SELLING GUIDE FOR ALBERTA. By George C. Stewart. 4th. ed. Vancouver: International Self-Counsel Press, 1985.

REAL ESTATE LAW. In Resource News 11 (March 1987).
* Available from Legal Resource Centre, Faculty of Extension, University of Alberta, Edmonton, Alberta.

4. HOUSING LAW

For the purposes of housing, the law generally regards us as either owners or renters. If we are owners we look primarily to real property law, although there are some other laws which do not apply (see part 3, Ownership of Property). If we are renters we look to the laws which govern the relationship between landlords and tenants, as well as to contract laws which govern the residential tenancy agreements.

IF YOU OWN YOUR OWN HOME

For a man's house is his castle. (Sir Edward Coke, 1628)

This saying epitomizes what we all believe to be our rights with respect to our home - that we are the supreme rulers within our own realms. For the most part this is true. We enjoy many rights by virtue of owning our own homes. We also have certain obligations as homeowners. As was explained in part 3 on Ownership of Property, our rights as property owners are qualified in the interests of society as a whole.

The Right to Quiet Title

This right gives you, as owner and occupier, the right to be free from invasions, interferences, disturbances and adverse claims upon or against your property.

exclusivity - As the owner of your own home you have the right to use and enjoy your property to the exclusion of all others. You do not have to let anyone on your property or in your house that you do not want. For example, if a salesperson comes to your door and asks to come in to demonstrate a product, you can refuse their request and ask them to leave.

trespassers - The Canadian Criminal Code says that you can use force but no more force than is necessary to defend your property against intruders and trespassers. This includes anyone who does not have your permission or other lawful authority to be on your property. Realistically however, if someone is trespassing and refuses to leave, it would be wise to call the police.

In Alberta the Petty Trespass Act makes trespassing an offence punishable by a fine of up to $100. The Act applies only where the person has been notified, either verbally or by signs, not to trespass.

Trespass is also a civil law matter. This means that you can sue the trespasser for any damage caused by his being on your property.

nuisance - Nuisance means any interference with the occupier's right to the use and enjoyment of the property. The interference must not be trivial - it must be substantial and unreasonable. In other words, a minor inconvenience for a short period of time would not be the kind of nuisance that the courts would recognize. *As one noted author commented*

> ... there is a vast difference between noxious vapours from the stacks of alkali works and an occasional whiff of unpleasant smoke from a household incinerator or domestic chimney, between the shrill and relentless noise of circular saws, of a speedway track or jet engines and the sounds coming from a nursery, music room or even residential accommodation used by students in a proper manner.
>
> (Fleming, The Law of Torts, The Law Book Company Ltd., Australia, 1971, p. 348).

Where there has been a nuisance against your property, you can sue the person who has caused it and ask the court to award damages as compensation for the harm caused. What will be deemed as a nuisance compensable by damages will vary from neighbourhood to neighbourhood depending what is considered to be reasonably expected for that neighbourhood.

utility companies - There are certain people who have a right to enter your property without your permission. For example, the various utility companies (gas, water, electrical and telephone) have a right to enter your premises to install, service, and disconnect their equipment. So, if someone comes to read your gas meter or disconnect your utilities for non-payment, they have the right to enter your premises to do so. There may be occasions when there is no one home or when you do not want the monthly visit from the meter-man. In such cases you may be able to arrange with the utility company to phone in your reading. However, this would simply be a policy decision of the utility company. They still have the right to come in and check their equipment.

police - The police may also enter your home without your permission in certain circumstances. If the police come to your door with a search warrant they have the right to come into your home and search for evidence. They can also enter without a search warrant if they reasonably believe that a crime is being or has been committed there, or if they believe a criminal is hiding there.

other lawful visitors - There are some other instances where the law recognizes the rights of others to be on your property. These are situations in which someone else has acquired the right to enter your land to put up a sign, or to mine for minerals, or to simply cross your land. For example, it is quite common in Alberta for an oil company to acquire the right to go onto a farmer's land to drill for the oil beneath the surface.

Your Responsibility to Others

As the owner and occupier you have the responsibility of ensuring that your property is safe for the people who are lawfully on it. This includes anyone you invite onto your property and anyone who has a lawful right to be there or who lawfully entered your property but later became an unlawful

visitor. It does not include trespassers unless the trespasser is a child and it is reasonable to expect that a child might trespass on the premises. In other words, if you suspect that a child might come onto your property, you should ensure that your property is safe and free from hazards that might injure a child.

Another important aspect of your responsibility to visitors - and this applies to trespassers - is that you cannot intentionally or carelessly create a situation that would cause harm. In other words, you cannot set a trap. For example, you cannot string wire across the path of snowmobile drivers using your property without your permission, nor can you dig a pit in your backyard and camouflage it in the hopes of catching a would-be thief or garden raider. You also cannot leave a known hazardous situation uncorrected with the intention of tripping up an intruder. If you do any of these things, the trespasser can sue you. In addition, setting a trap with intent to cause death or bodily harm to persons is an indictable offence under s.231 of the Criminal Code, carrying a possible maximum penalty of imprisonment for five years.

Taxes

Property taxes are another responsibility of property owners. If they are not paid, the taxing authority may place a lien on the property and cause it to be sold. The proceeds are then used to pay the taxes and other legitimate charges against the land.

Expropriation

Even though you own your own property, the provincial government and the municipal government can take it away from you for the construction of public works. These expropriations are handled by the Alberta Land Compensation Board. Your property can also be expropriated for the purpose of energy and resource development. The Alberta Surface Rights Board deals with these expropriations. Your rights to seek professional advice and to receive proper compensation are provided in the Expropriation Act.

IF YOU RENT YOUR HOME

Whether your rented home is a house, apartment, senior citizen's apartment or senior citizen's lodge, the laws which govern it are those found in the Landlord and Tenant Act and your rental or tenancy agreement.

What is a tenancy agreement?

A tenancy agreement is the contract between you and your landlord. Although it may not always be in writing, it is best if it is. In addition, if it is for a period of 3 years or longer, it should be registered against the property at the Land Titles Office to protect your rights under the lease, in relation to any future landlord.

What does a tenancy agreement say?

Your tenancy agreement should contain all the terms which are important to the rental of your home. This includes your name, your landlord's name, the address of the rented premises, the term of the tenancy, the amount of security deposit paid, the amount of rent to be paid, and the services which are covered by the rent. The agreement should also state if there are any extra charges for such things as parking stalls, recreational facilities, storage areas, and laundry facilities. Also, it should be clear as to the number of tenants permissible in the premises.

How much security deposit can the landlord ask for?

The Landlord and Tenant Act states that the most the landlord can ask for is the equivalent of one month's rent.

How often can my landlord increase my rent? & how much?

Alberta no longer has rent controls, so your landlord can increase your rent as often as and by as much as he wants. The only restriction on rent increases is that he must give you written notice of the increase at least 90 days before the increase is to become effective. If your lease provides for a longer written notice, then it will apply.

What are my landlord's obligations?

The Landlord and Tenant Act provides that your landlord must have your premises available for you on time. The premises must be fit for human habitation. And your landlord must not disturb your "possession or peaceful enjoyment" of your new home. This means that he cannot enter your premises without your permission unless there is an emergency or unless he suspects you have abandoned the premises. There are circumstances where he can enter your premises if he has given 24 hours notice in writing. The notice must name a reasonable time that he will be coming in, for example, not in the middle of the night! The circumstances in which he can come in are if he wishes to inspect the state of repair of the premises, if he wishes to do some repairs to the premises, or if he wishes to show the premises to prospective purchasers, mortgages or tenants.

In addition to the obligations your landlord has under the Landlord and Tenant Act, there may be some services he has agreed to provide under the terms of your tenancy agreement. For example, he may be responsible for repairing your appliances or for doing major cleaning like carpeting and draperies.

What are my obligations as a tenant?

The Landlord and Tenant Act specifies certain things which are the obligations of all tenants. You must pay your rent on time, keep your premises clean, and leave at the end of your tenancy. You must not do anything which would interfere with the rights of other tenants which might endanger people using the premises, which might damage the premises, or which is illegal.

As with the landlord, there may be additional obligations under the terms of your tenancy agreement. These could be such things as doing your own major repairs.

What if I want to move out? How much notice must I give?

If you want to move out you must give the proper notice. This means both the proper form of notice and the proper length of notice.

The notice must be in writing, signed by you, and it must state the address of your premises and the date on which the tenancy is to end. The notice must be served on your landlord either personally or by registered or certified mail.

The proper length of notice will be determined by the term of your tenancy. If you have a periodic tenancy - weekly, monthly or yearly - the length of notice required is as follows:

(i) weekly tenancy - This is where you pay your rent on a weekly basis. Notice to terminate your tenancy must be given prior to the beginning of the tenancy week in order for it to be effective on the last day of that week.

(ii) monthly tenancy - This is where you pay your rent on a monthly basis. Notice to terminate your tenancy must be given before the beginning of the tenancy month in order for it to be effective on the last day of that month. For example, if you wish to vacate on June 30 and your tenancy runs from the first of the month to the end of the month, then you must give notice no later than May 31.

(iii) yearly tenancy - This is where you have rented premises on a yearly basis. You may be paying your rent yearly or monthly. Notice to terminate your tenancy must be given on or before the 60th day before the end of the tenancy year in order for it to be effective on the last day of that year.

What if I have rented my place for a set length of time?

If you have a fixed term tenancy - for example, 6 months, 1 year etc. - and you want to leave at the end of the term, then no notice is required. If you wish to leave before the end of the term, then you will have to see what your agreement says about notice. You should also find out if there is a penalty for early termination. If you have such a tenancy it will specifically say "fixed term" and then there is no automatic right to renew.

What if my landlord wants me to move out? How much notice must he give me?

If your landlord wants you to leave, he must give you proper written notice. The notice must be served on you personally or by registered or certified mail. It must be signed by your landlord or his agent, state the address of your premises, and it must state the date on which the tenancy is to end.

The length of notice required for a periodic tenancy will be determined by the type of tenancy:

(i) weekly tenancy - Your landlord must give you notice prior to the beginning of the tenancy week in order for it to be effective on the last day of that week.

(ii) monthly tenancy - Your landlord must give you notice at least 3 consecutive months prior to the date he wishes you to leave for it to be effective on the last day of the third month. For example, if he wishes you to leave June 30, he must give you notice no later than March 31.

(iii) yearly tenancy - Your landlord must give you notice on or before the 90th day before the end of the tenancy year in order for it to be effective on the last day of that year.

If you have a fixed term tenancy, and your landlord wants you to leave before the end of the term, the tenancy agreement will determine what sort of notice is required.

Does my landlord have to have reasons to ask me to move out?

As long as your landlord has given you proper notice, he does not need any reasons to ask you to move out. If he wants you out before the required notice period would normally expire, he must show that you have committed a substantial breach of your tenancy agreement. A substantial breach occurs when you do not live up to your obligations (see "What are my obligations as a tenant?"). A substantial breach also includes a series of breaches of your tenancy agreement which are found to be substantial when added together.

For example, if you do not pay your rent or if you damage the premises, your landlord can serve you with 14 days notice to leave. You can object in writing and your landlord will then have to take you to court to terminate the tenancy. For any substantial breach other than non-payment of rent, your landlord can apply to the court to terminate your tenancy. If the breach is for non-payment of rent, payment of the outstanding amount prior to the end of the notice period will make the notice to terminate ineffective.

Is there anything else my landlord can do if I don't live up to my tenancy obligations?

The Landlord and Tenant Act provides a number of remedies for landlords who have tenants who breach their tenancy agreements. Landlords can apply to court for the recovery of unpaid rent, for damages to compensate for breaches of the tenancy agreement, and for compensation and possession where you have refused to leave the premises even though the tenancy has expired.

Your landlord also has a remedy if you have moved out but have left some of your property behind. If the abandoned goods are worth less than $300, your landlord can dispose of them. If they are worth $300 or more but are perishable or would not likely sell for enough to cover the removal, storage and selling costs, your landlord can sell them. If the goods don't fit in either of these categories, your landlord must store them for 60 days. At the end of 60 days, he can have them sold by public auction or by private sale. The money from the sale is used to cover the removal, storage and selling costs, and any judgments the landlord may have against you. The surplus, if any, must be paid to the Provincial Treasurer, who will hold it for a year for you to claim. If you do not claim it within a year, the surplus will be paid into the General Revenue Fund.

What can I do if my landlord doesn't fulfill his obligations?

If your landlord breaches your tenancy agreement or the Landlord and Tenant Act, you may apply to the court for damages caused by the breach and for compensation for any costs you incurred in performing your landlord's duties. You may also ask for a reduction in your rent for the period that you were deprived of the full benefit of your tenancy because of your landlord's breach. If the breach is significant the court may agree to end the tenancy.

If your landlord has failed to make your premises available on time, you may apply to the Court of Queen's Bench to end the tenancy or to make the landlord make the premises available. You may also be able to recover damages for this failure of your landlord to fulfill his obligation.

Once I leave, how do I get my security deposit?

Within 10 days of your leaving, your landlord must return your security deposit plus interest. Your landlord is required to pay interest on your security deposit based on the rate set by regulation. Any money held before January 1, 1982 earned 6%; money held between January 1, 1982 to December 31, 1983 earned 12%; money held between January 1, 1983 to March 1, 1987 earned 8%; presently the rate, from March 1, 1987 is 6%. You must refer to the regulations at any given time to determine the amount of interest you are entitled to.

If your landlord deducted all or part of your security deposit, he must give you the balance and a statement accounting for the deductions. Your landlord can make deductions for the items which you agreed to when you began your tenancy. No deduction may be made for reasonable wear and tear. If your landlord does not return your deposit or the balance plus a statement of account, you may sue him.

What do you mean when you refer to 'the court'?

Sometimes 'the court' refers to the Small Claims Division of the Provincial Court of Alberta and sometimes it refers to the Court of Queen's Bench of Alberta. For most purposes, you and your landlord can use the Small Claims Court. However, you must use the Court of Queen's Bench where the Landlord and Tenant Act says you must. For example, termination of tenancy because of substantial breach or where the monthly rent is in excess of $500.00. There are also monetary limits on the Small Claims Court. You cannot sue in Small Claims for an amount in excess of $2000.

Is there anyone I can call if I have landlord-tenant problems?

Yes. You can call the Landlord and Tenant Advisory Board. They can give you advice about your problem; they can try to resolve the problem between you and your landlord; they can investigate complaints where there has been a breach of the Landlord and Tenant Act.

There are Landlord and Tenant Advisory Boards in numerous locations throughout the province.

LANDLORD AND TENANT ADVISORY BOARDS IN ALBERTA

BANFF
Banff Family and Community Support Services, c/o Y.W.C.A.
P.O. Box 1835
108 Spray Avenue
Banff, Alberta
T0L 0C0
Phone: 762-4511

JASPER
c/o Family and Community Support Services
Box 1090
Jasper, Alberta
T0E 1E0
Phone: 852-3381

CALGARY
800 Macleod Trail South
Box 2100, Station M (8113)
Calgary, Alberta
T2P 2M5
Tel: 268-4656

EDMONTON
Musial Building
10237 - 98 Street
Edmonton, Alberta
T5J 0M7
Tel: 426-4951

FORT MCMURRAY
c/o Family and Community Support Services
Room 14, 9601 Franklin Avenue
Fort McMurray, Alberta
T9H 2J8
Tel: 743-5000

LETHBRIDGE
Bill Kergan Centre
207 - 13 Street North
Lethbridge, Alberta
T1H 2R6
Tel: 320-3849

MEDICINE HAT
City Hall
580 - First Street S.E.
Medicine Hat, Alberta
T1A 8E6
Tel: 429-8308

RED DEER
205, Toronto Dominion Bank Bldg.
4921 - 49 Street
Red Deer, Alberta
T4N 1V1
Tel: 343-0410

ADDITIONAL MATERIALS

1. BOOKS

CONSUMER COMPLAINTS: A SELF-HELP HANDBOOK. By Alberta. Department of Consumer and Corporate Affairs. Edmonton: The Department, 1987.

LANDLORD/TENANT RIGHTS IN ALBERTA. By Mary Harasim. 5th. ed. Vancouver: International Self-Counsel Press, 1986. (Self-Counsel Series).

2. PAMPHLETS

(a) Dial-a-Law Transcripts. Calgary: Calgary Legal Guidance, 1980
Individual titles in the series include:
- Moving into an apartment
- Moving out of an apartment
- Living in an apartment
- Listing and selling your home
- Responsibilities when renting

(b) LANDLORD AND TENANT HANDBOOK. Edmonton: Student Legal Services. (Edmonton, Alberta), 1987.

(c) IMPORTANT QUESTIONS AND ANSWERS FOR LANDLORDS AND TENANTS. Association of Members and Staff of Alberta Landlord and Tenant Advisory Boards. Edmonton: AMSALTAB, 1988.

3. PERIODICALS

(a) LANDMARK. Edmonton: Alberta Home Mortgage Corporation, 1980.

5. FAMILY LAW

This section on family law has been divided into two parts: A - Marriage and Common Law Relationships, and B - Separation, Divorce and Annulment.

A. MARRIAGE AND COMMON LAW RELATIONSHIPS

In the past, marriage was a private matter between the two marriage partners. It was governed by tradition, not by government or religion. Common law marriages were recognized as legal marriages where both parties were single and had the intention to create a lasting relationship. Even as recently as the settlement of North America, such marriages were considered legal. Couples in remote communities without religious or civil services could become husband and wife by declaring their intentions to do so to the community in which they lived.

What is a Common Law Relationship?

Today we often hear people using the term 'living common law', meaning that a man and woman have chosen to live together as husband and wife without fulfilling the requirements of the Marriage Act. However, the common law arrangements of today are not recognized as legal marriages.

The only legal marriage in Alberta today is one which is performed according to the requirements of the Marriage Act of Alberta. The Act requires that the partners be 18 years or older, (or if under 18 but over 14, consent of their parents), that they have obtained a valid licence, and that they have been married by a marriage commissioner or clergyman authorized by the Act.

The basic legal difference between a common law relationship and a statutory marriage is the bundle of rights and obligations - such as rights to property, support, inheritance and so on - that go with a statutory marriage but not with a common law relationship.

Usually, the law regards common law partners as it would two partners. In other words, if you are living with your partner in a common law relationship, you will have no special rights or obligations because of that relationship, as would a married couple.

Can common law partners create a legal relationship by a cohabitation agreement?

Some common law partners try to create a legal relationship - giving each other certain rights and obligations - by a contract called a cohabitation agreement. Such contracts have not been upheld by our courts in the past since they were considered to be contrary to public policy, meaning they offend public morals. However, relationships outside statutory marriage are increasingly common, and currently seem to be more accepted.

As a result, our courts are beginning to recognize the agreements governing these relationships.

If you decide to make a cohabitation agreement with your partner, it can contain terms about property, debts, household responsibilities, and just about anything else you feel is important to your relationship. However, the agreement cannot grant legal rights which are only available in a legal marriage. For example, a cohabitation agreement cannot legitimize illegitimate children.

A cohabitation agreement must also have the proper consideration. This is a legal term which means that each party to a contract must give the other something of value in return for the promises in the agreement. For example, in a store you give the store owner money in return for a radio which the store owner promises will work. In a cohabitation agreement, the exchange of mutual promises is often seen as good consideration. However, to be really careful, it might be wise to include the exchange of a nominal sum of money in the contract. The courts do not usually concern themselves with the adequacy of the consideration, only that consideration has passed.

RIGHTS & OBLIGATIONS IN A COMMON LAW RELATIONSHIP

Whose surname may be used in a common law relationship?

You may choose to use any name you want unless you do so with the intent to defraud others. Thus, a common law wife may use her partner's surname or he may use her surname. However, a common law wife cannot go through a legal change of name to that of her common law husband.

Can I be convicted of a crime against my common law partner?

Yes. Just as you can be convicted of a crime against a friend, business partner, or anyone else, you can be convicted of a crime against your common law partner.

Can I be sued for damages by my common law partner?

Yes. There are no limits on your liability for civil wrongs (torts) committed against your common law partner simply because of his or her status as your common law partner. For example, if you were driving and had a car accident in which your partner was injured, your partner could sue you for that injury.

Can I enter into a contract with my common law partner?

Yes, and the contract will be legally binding. For example, if you were to offer to buy your partner's car for $4,000, you could not later decide that you should only pay $3,000 just because this is your partner. You would still be required to pay what you had agreed to in the first place.

As a common law wife, can I use my husband's credit?

No. A common law husband has no obligation to provide you with food, shelter, clothing - or anything else for that matter - even though you are living as his common law wife. Thus, you cannot use his credit to buy these things.

Am I responsible for my common law partner's debts?

No. In a common law relationship, you are only responsible for your own debts. If, however, you buy something jointly with your partner, and you both pledge your credit to buy it, then you are both equally responsible to pay the debt. If your partner does not pay his or her share, you will be totally responsible for it. Also, if you have held yourself out as being married and merchants have relied on this previously to provide food, clothing or shelter, you may be responsible for those debts of your partner.

Is there any tax advantage in a common law relationship?

Yes. A common law spouse can pay his or her common law spouse for housekeeping and child care expenses and claim the payment as a deduction for income tax purposes.

How may a common law relationship be ended?

You need no legal formalities to end a common law relationship. It simply ends when one or both of you decide to end it, although there may be property issues to be settled.

As a common law wife, do I have any right to support?

No. You have no right to support from your partner either during the relationship, or when it ends.

Who owns what in a common law relationship?

The general rule in a common law relationship is that property belongs solely to whoever bought it. In the case of jointly purchased property (see part 3 on Ownership of Property), you must either agree to who will keep the property, or, failing that, you must sell the property and share the proceeds according to how much you each contributed. If the amount of your financial contribution cannot be proved, the property will go to the partner in whose name the property was purchased or registered.

In the case where you bought a house by a joint tenancy (see part 3 on Ownership of Property) with your common law partner, the house will be split according to the financial contribution made by each of you. If one of you did not make any contribution to the purchase of the house, that partner would likely not be entitled to a share in the property, even though his or her name appeared on the title. Where the title to the house is in the name

of only one of you, but the other can prove that he or she contributed to the purchase of the house, the property will again be divided on the basis of the amount of contribution by each. In the absence of proof - for example, cheques or receipts - the property will not be divided between the partners.

Although the general rule in a common law relationship is that no property rights flow from or because of that relationship, you may be able to successfully claim an interest in property held in the name of your partner. Such a claim would be based on the law of trusts. You, as claimant, would have to show that both you and your partner intended that the property was to be shared between you even though that property was actually owned only by your partner. This is called a resulting trust. If such a common intention cannot be proved, a right to a share in the property can arise where your contributions (financial and/or non-financial) enabled your partner to acquire the property. It must be shown that your partner received a benefit and that you suffered a corresponding loss. It must also be shown that it would be unjust for your partner to retain the benefit. This concept is called unjust enrichment and the trust which is thereby established is called a constructive trust.

If my common law partner dies, do I have any right to inherit?

In a common law relationship, you have no right to inherit your partner's estate - nor would your partner inherit yours in the event of your death unless you were specifically named in the will. This will be dealt with in more detail in part 10 on Wills & Estates.

If you own property by joint tenancy with your partner, you have the right of survivorship to your partner's share of that property (see part 3 on Ownership of Property).

In the case of a life insurance policy, whether or not a common law spouse can receive the proceeds of a policy will depend on the written policy itself. If you are specifically named you are entitled to receive the benefits of the policy. However, if your partner has named "my wife" as beneficiary, the insurance company may not be obligated to pay the proceeds to you even though there is no legal wife in existence. The situation will also be affected by the existence of a legal spouse.

Are there any laws which recognize a common law relationship?

Even though a common law relationship is not recognized as a legal marriage, there are certain laws which recognize the relationship. In Alberta the following statutes recognize a common law relationship and in certain circumstances provide compensation or benefits to the partner and/or children of a common law relationship if requirements are met:

1. The Worker's Compensation Act
2. The Fatal Accidents Act
3. The Public Service Pension Plan
4. The Criminal Injuries Compensation Act
5. The Insurance Act

There are also certain federal statues which recognize rights for a common law spouse in certain circumstances:

1. The Unemployment Insurance Act
2. The Canada Pension Plan
3. The Income Tax Act

WHAT IS A STATUTORY (LEGAL) MARRIAGE?

A legal marriage is one which has been performed according to the requirements of the Marriage Act of Alberta. These requirements include the following:

- the marriage ceremony must be performed by a clergyman or marriage commissioner
- a marriage licence must have been obtained
- both partners must be 18 years of age or older or have obtained the required consent
- both partners must be single. If one partner has been married previously, he or she must be able to prove that the marriage has ended by producing a divorce decree absolute, divorce order, or a death certificate. In the situation where one of the applicants has been previously married and the marriage has not been dissolved but the applicant's spouse is presumed dead, the applicant can obtain from the court a decree of presumption of death
- both partners must be of sound mind; that is, they must know what they are doing and what the consequences of marriage are
- there must be two witnesses at the ceremony

Once a marriage has been solemnized, the marriage commissioner or clergyman will issue a marriage certificate specifying the names of the married couple, the date and place of the marriage, and the names of the witnesses. The couple is now considered legally married.

The change of marital status from single to married is accompanied by various other legal changes to a person's relationship with his or her spouse, as well as with the world. These changes affect legal capacity, domicile, property rights in general, and specifically, matrimonial property. Also, any Will made prior to the marriage will become void unless specifically noted within it that it was made in contemplation of marriage to your new spouse.

Can marriage partners create, by contract, legal rights and obligations other than those which already flow from marriage?

Pre-marriage and marriage contracts are sometimes used by marriage partners to try to sort out a variety of issues which they consider to be important to their marriage. While there may be certain restrictions on what may be included in such contracts, they may be enforceable in whole or in part, or they may simply serve as evidence in court of the spouses' intentions.

If you decide to enter a pre-marriage or marriage contract, it may include matters such as income, household maintenance, insurance, and anything else which you consider important. The courts will likely not interfere with these agreements where there has been full disclosure by both of you, where you have observed your matrimonial obligations, and where you have acted in good faith.

Under the Matrimonial Property Act of Alberta, you are allowed to enter into marriage contracts relating to matrimonial property rights (see "Rights and Obligations of Marriage").

RIGHTS & OBLIGATIONS OF MARRIAGE

Whose surname may be used in a legal marriage?

You may choose to use any name you want unless you do so with the intent to defraud others. However, as a legal wife, you have the right to use your own family name or your husband's family name. If you wish to use your husband's family name, you do so simply by assuming it. If you wish to begin using your maiden name again after having used your husband's surname you do so simply by assuming it.

In addition to the choice between the assumption of your husband's surname or the continued use of your maiden name, you can decide to use a hyphenated surname consisting of your surname and your husband's in either order. Your husband can also assume this hyphenated surname. Again, no legal formalities are required. The only paperwork involved is obtaining identification bearing the new surname.

Can I be convicted of a crime against by spouse?

Yes, except neither of you may be convicted of theft from the other if you are cohabitating.

Can I be sued for damages by my spouse?

In a legal marriage, you are limited to suing each other for the protection and security of property. The law provides that while you may sue for damage to the car caused in an accident, you cannot sue your spouse for any physical injuries suffered as a result of the accident.

You are not responsible for damages arising from a civil wrong (tort) committed by your spouse. For instance, if your spouse injured someone else, that person could not sue you for damages.

Can I enter into a contract with my spouse?

Contracts between spouses, except for the purpose of separation, will generally not be considered to be legally binding. This is because spouses are presumed not to intend that legal consequences should flow from their agreements. But this presumption can be rebutted in appropriate circumstances.

Can I use my spouse's credit?

Yes. Your spouse is obliged to provide you with food, shelter, and clothing and if your spouse fails to do so he or she can be charged under s.197 of the Criminal Code. Although previously it was only recognized that a wife could pledge her husband's credit for these necessaries, the non-discrimatory nature of present laws may also allow a husband to pledge his wife's credit.

Am I responsible for my spouse's debts?

Not really. In Alberta, spouses are separate persons in matters of contract. This means that each of you can enter into contracts individually and each is liable for those contracts. In practical terms, as a husband and wife you can each buy your own car and each will be individually responsible for paying for it. You can also sue others and be sued by others individually, and judgments can be enforced against you individually. You can also each be adjudged bankrupt.

Is there any tax advantage in marriage?

You may claim your spouse as a dependent if your spouse earns under a certain amount per year. This amount is specified on your income tax form and may change from year to year.

How may a legal marriage be ended?

Legal marriages may only be ended by proper legal proceedings, for example, divorce or annulment (see section B - Separation, Divorce and Annulment).

As a spouse in a legal marriage, do I have any right to support?

Yes. During your marriage you have the right to food, clothing and shelter. On separation or divorce, you usually have the right to support, as the right to support extends to the dependent spouse. Thus if a wife were supporting her husband, he may be entitled to support from her, just as she may be entitled to support from him if she were a dependent spouse.

As a grandparent, do I have any rights to my grandchildren?

There are no provincial laws which give you, as a grandparent, application for interim or permanent custody or the access to any or all children of the marriage, with leave of the court in a divorce action, taking into account the best interests of the child or children. For possible guardianship of your grandchildren on the death of their parents or a finding of them to be unfit parents, a lawyer should be contacted to determine the best cause of action.

Who owns what in a marriage?

Usually in a marriage who owns what property is not a problem; property is used and shared by both. It is on the breakdown of a marriage that property rights become a problem.

(a) How is property divided?

The basic principle of the Matrimonial Property Act is that upon marriage breakdown matrimonial property is to be divided equally between you and your spouse, unless to do so would be unfair. Matrimonial property is all the assets or increase in the value of previously held property, acquired during the marriage. However, it does not include gifts, inheritances, settlement of tort damage awards or insurance proceeds to, or property owned prior to the marriage by, one of the spouses. Whether or not a division would be unfair is determined by a judge, who examines the circumstances in light of thirteen factors set out in the Act. These thirteen factors are as follows:

1. the contribution made by each spouse to the marriage and the family;
2. the financial and non financial contribution made by each spouse to business undertakings;
3. the financial and non-financial contribution made by each spouse to the matrimonial assets;
4. the financial resources of each spouse;
5. the duration of the marriage;
6. whether property was acquired during a period of separation;
7. the terms of an oral or written agreement between the spouses;
8. any gifts or transfers of property to third parties;
9. any previous distributions of matrimonial property;
10. previous court orders;
11. tax liabilities as a result of the disposal of property;
12. whether one spouse has disposed of property to the detriment of the other; and
13. any other relevant fact or circumstances.

(b) Can we share our property differently than prescribed by the Matrimonial Property Act?

Yes. The Matrimonial Property Act specifically provides that you and your spouse can contract out of the sharing provisions of the Act. The Act allows you to enter into a written agreement which spells out the "status, ownership and division" of property owned by each of you before the marriage and property acquired during the marriage.

One situation where this often occurs is when one of you enters the marriage with a substantial amount of property and a potential for the acquisition of more, which you do not wish to risk losing in the event the marriage is not successful. Under the Matrimonial Property Act and without a contracting out agreement, the increase in the value of that property and any property acquired during the marriage could be subject to a possible division and distribution upon marriage breakdown.

Any agreements by which you and your spouse contract out of the Matrimonial Property Act's sharing provisions must follow certain formalities. The agreement must be in writing, must be witnessed, and must be accompanied by certificates indicating that independent legal advice was given to each spouse.

(c) What happens to the matrimonial home on death or divorce?

Both the Dower Act and the Matrimonial Property Act apply to the matrimonial home. The "matrimonial home" is defined as that property in which the spouses are ordinarily resident making up not more than 4 adjacent city lots or if outside a municipality, 1/4 section of land on which the house is located. One of the basic features of the Dower Act is that if your spouse is the owner of the matrimonial home, he or she cannot sell it, mortgage it, or otherwise dispose of an interest in it without your consent. However, once your consent is properly obtained, the home can be sold, mortgaged, or otherwise disposed of, and your dower rights to the extent necessary to give effect to the disposition will no longer exist.

The Dower Act also provides that upon the death of the owner spouse, you as surviving spouse, are entitled to remain in the house until your death. The Act does not give you any rights of ownership; rather it ensures that you will have accommodation for the rest of your life. This is called a life estate. When you die, the home will become part of the estate of your deceased spouse and will be disposed of according to the terms of his or her will. If there is no will, it will be disposed of by the terms of the Intestate Succession Act (see part 10, Wills and Estates).

An important thing to understand is that once the dower rights have been extinguished, you have no right to remain in the home after the death of your spouse.

The Matrimonial Property Act applies to marriage breakdown; it determines who owns what when a marriage ends. As was explained, the accumulated matrimonial assets, of which the matrimonial home may be one, will be divided equally between you and your spouse unless such a division would be unfair. This principle applies whether the home is registered in the name of one spouse only or in the names of both.

If no dower rights remain in the property, and in the absence of an order under the Matrimonial Property Act, the rights to the matrimonial home are determined either by agreement between the spouses or equitable principles governing the splitting of property. In general, if the property is registered in your name, you are the sole owner unless your spouse can prove that he or she contributed to the purchase of the property. Where the property is registered in both names, you are equal owners of the home. In the event of a sale, each of you is entitled to one-half of the proceeds.

What rights do I have to inherit my spouse's property?

As a legal spouse, you will have a variety of rights to inherit your spouse's estate. These are dealt with in part 10 on Wills & Estates.

B. SEPARATION, DIVORCE AND ANNULMENT

SEPARATION

What is separation?

Separation is simply the circumstances where you and your spouse are no longer living together, for whatever reason. Such a separation is legal, even without the formality of a written separation agreement or a court order.

What is a legal separation?

A legal separation usually refers to either a separation formalized by a written separation agreement, or one which has been formalized by a court order. This latter form of separation is more accurately called a judicial separation.

What is a judicial separation?

A judicial separation is a court-ordered separation which can only be obtained by applying to the court. There must be proper grounds, for example, adultery, cruelty, or desertion. In this respect, a judicial separation is similar to a divorce. However, it differs from a divorce in that an order granting a judicial separation does not leave the parties free to remarry. A judicial separation often occurs where there are religious reasons for not wanting a divorce.

A judicial separation releases you and your spouse from the obligation to live together as husband and wife. It can also deal with questions of custody, maintenance and support, and the division of matrimonial property. The terms of the order can be varied at a later date, but only if the circumstances are substantially different from those at the date of the original court order.

What is a separation agreement?

A separation agreement is a written contract between you and your spouse that can contain just about anything to which you both agree. It usually contains terms relating to the custody of children, maintenance and support, and the division of matrimonial property. The agreement can be amended at a later date if you both agree to the change.

A separation agreement remains in effect as long as you are separated. Some of the terms can even be made part of a divorce settlement if you agree.

Problems can arise where one of you does not live up to his or her part of the agreement. If you are the aggrieved spouse, you can sue for breach of the separation agreement. This would require the services of a lawyer and involves time and expense. It is often better, if possible, to try and resolve the matter yourselves.

What happens to property?

In general, you and your spouse can agree to any distribution of property you wish. The operative word here is "agree". It is when you cannot agree that resort must be had to the law. The law, in the form of the Matrimonial Property Act, presumes an equal distribution of the matrimonial assets, unless the circumstances indicate that this would be unfair. The Act applies to both separating and divorcing couples (see A - Marriage and Common Law Relationships).

What happens to debts?

In general, you are each responsible for your own debts. However, you may also be responsible for any debts incurred by your spouse for the purchase of food, clothing and shelter where circumstances are such that you have previously been responsible for such debts. As well, you have joint responsibility for joint debts; for example, where you both signed for a bank loan or both hold joint credit cards.

You may also agree who will be responsible for which debts when you separate. As you are still responsible to provide for your family, and your spouse if dependent on you, with food, clothing and shelter even after separation, there is often an amount provided by way of maintenance or support payments.

With regard to other debts, you both will continue to be individually responsible for your own debts, and jointly responsible for your joint debts.

What is matrimonial relief?

Matrimonial relief refers to both the alimony payments made during the period of separation, as well as to the maintenance paid after you are divorced. How much these support payments will be is a matter which you can negotiate. If you cannot agree and the courts are called upon to decide, the amount will be determined based on your circumstances.

As a husband, do I have the same rights as my wife?

The law now recognizes that there are reciprocal or mutual rights and obligations of support between spouses. In other words, your wife can now be ordered to provide support for you in the appropriate circumstances. However, it is still much more common for a husband to be making the support payments. This is because of the wife's role as homemaker, and hence her financial dependence on the husband. Even where the wife has a job outside the home, her income may not be sufficient to support her without assistance from her husband.

DIVORCE

What is a divorce?

A divorce is a legal procedure by which a marriage is ended. Divorce proceedings are begun by a Petition for Divorce. If you begin the proceedings, you are called the petitioner while your spouse is called the respondent. Either you or your spouse must have been ordinarily resident in the province in which the divorce proceedings are begun for at least one year before the proceedings are started. Of this period of ordinary residency, you or your spouse must have actually resided in the province for 10 months. This section is presently being questioned as to its validity in relation to the mobility rights granted under the Charter, and in future may no longer be a requirement.

What are the grounds for divorce?

In Canada, a court may grant a divorce on the ground that there has been a permanent breakdown of the marriage. The breakdown of a marriage is established if you have lived separate and apart from your spouse for at least one year immediately preceding the determination of the divorce proceedings (being the granting of the Divorce Order) and living apart at the commencement of the proceedings, or if since the marriage, your spouse has committed adultery or treated you with physical or mental cruelty of such a kind as to make continued cohabitation intolerable. You cannot petition for a divorce on the basis of your own marital offense.

How do I get a divorce?

It is not necessary to have a lawyer conduct divorce proceedings, although this is the most common method. For very straight forward, uncontested divorces, you may do it yourself with the assistance of available self-help materials. However, this decision should not be taken lightly, as any legal procedure which involves the courts is technical and can be complex for the layman.

Where you have decided to have a lawyer handle the divorce, it is wise to get an idea at the outset as to what the legal fees will be. Also, the Divorce Act, 1985 places a duty on the lawyer to draw your attention to various provisions of the Act and to address the issue of reconciliation with you, including the availability of counselling or guidance services. The lawyer must discuss the advisability of negotiating such matters as custody and support, which could be the subject of a court order, and the mediation services available to assist such negotiations.

What happens to property?

The best matrimonial property settlement is usually the one which you and your spouse have arrived at yourselves. Where this is not possible, an application can be made for a court order under the Matrimonial Property Act. For a more detailed discussion of the principles relating to matrimonial property settlements, see A - Marriage and Common Law Relationships.

What happens to debts?

You are each responsible for your own debts and are jointly responsible for your joint debts. These responsibilities will continue even after the divorce and until the debts are extinguished. One of you can agree to assume full responsibility for the joint debts. However, as long as the joint charge account or joint loan still bears the name of the other spouse, he or she is still legally responsible for that debt.

What about maintenance and support?

As was mentioned in relation to matrimonial relief and separation, support payments can be ordered by the court as part of the divorce proceedings. The court can simply confirm what you have already agreed to under a separation agreement, or it can determine an amount based on such factors as both of your incomes, the standard of living you each enjoyed during the marriage, the accumulated assets of your marriage and your present circumstances. In some situations a lump sum award is made instead of periodic maintenance payments. In general, the question of maintenance and support will be determined by the facts of each case, rather than by any pre-determined guideline of amounts.

ANNULMENT

What is an annulment?

An annulment is the term used for a decree of nullity granted by the Court with respect to a marriage when there is some legal defect so that the marriage is seen not to be a marriage at all. Such a marriage is either void or voidable. A void marriage is one in which the defect is of such a serious nature that the law considers that no marriage took place, for example, where one party is already married or where the parties are too closely related. A marriage will also be void where there has been a mistake as to the nature of the ceremony or the identity of a partner, or where there has been duress or fraud, or where one of the partners was insane or drunk at the time of the ceremony.

Where the marriage is void, the Court does not need to make a declaration of nullity. However, for the sake of certainty there may be instances where it is wise to obtain such a declaration.

A voidable marriage is one in which the defects are less serious. The marriage will be considered valid until the Court declares it otherwise. A marriage will be voidable where the marriage has not been consummated, or where at the time of the marriage one of the partners has veneral disease, the wife is pregnant by someone other than the husband or where the proper consent was not obtained either due to insanity or some other form of mental incapacity inhibiting a proper consent.

ADDITIONAL MATERIALS

1. BOOKS

DIVORCE GUIDE FOR ALBERTA: STEP-BY-STEP GUIDE TO OBTAINING YOUR OWN DIVORCE. By R. Gary Dickson. 5th. ed. Vancouver: International Self-Counsel Press, 1986.

MARRIAGE AND FAMILY LAW IN ALBERTA. By Jean McBean. 3rd. ed. Vancouver: International Self-Counsel Press, 1987.

2. PAMPHLETS

(a) Dial-A-Law Transcripts algary: Calgary Legal Guidance:

Battered Wives
Battered Women
Changing your Name in Alberta
Common Law Relationships
Divorce Procedures
Enforcement of a Maintenance Order
Maintenance Order
Requirements for a Divorce
Restraining Orders, Assault Charges, Peace Bonds
Separation and Separation Agreements
Matrimonial Property Act
Annulment

(b) GUIDE TO THE LAW REGARDING COMMON-LAW RELATIONSHIPS IN ALBERTA. Edmonton: Student Legal Services (University of Alberta), 1986.

GUIDE TO THE LAW REGARDING GETTING MARRIED IN ALBERTA. Edmonton: Student Legal SErvices (University of Alberta), 1986

3. AUDIO-VISUAL

(a) FAMILY LAW. Saskatoon: Public Legal Education Association of Saskatchewan, 1985.

(b) HOUSE DIVIDED: THE END OF THE MARRIAGE. (video). By Gordon Hardy. People's Law School, and Public Legal Education Society - The People's Law School. Vancouver: The School, 1982.

(c) HOUSE UNITED: THE CONTRACT OF MARRIAGE. (video). By Gordon Hardy. People's Law School, and Public Legal Education Society - The People's Law School. Vancouver: The School, 1982.

4. PERIODICALS

(a) CANADIAN JOURNAL OF FAMILY LAW. Agincourt, Ontario: Carswell. 1979- .

(b) CANADIAN FAMILY LAW GUIDE. Don Mills, Ontario: CCH Canadian. 1978- .

(c) FAMILY LAW REVIEW. Toronto: Jonah Publications. 1979- .

6. CONSUMER LAW

Consumer law is that area of the law which is intended to protect the consumer in the marketplace. This section of Legal Rights of Older Persons will touch on some common areas of concern to the consumer and on some areas about which the consumer should be aware.

This section was prepared by the legal staff of the Legal Resource Centre with the help of material taken from Student Legal Services' pamphlet Consumer Law, and up-dated by Sylvia Tensfeldt.

RIGHTS AND RESPONSIBILITIES OF CONSUMERS

When is a purchase really a contract?

Every time you buy or agree to buy something, you make a contract. This is true whether you pay cash, make a deposit, pay in installments, or "charge it". It is true, generally, whether the agreement is in writing or is just oral, although some contracts or agreements must be in writing and must be signed.

What makes a contract a contract?

The law of contract operates on the theory of freedom of contract. This means that you and the seller are generally free to agree to any terms you wish, and the law will enforce your agreement according to these terms.

To have a contract

1. there must be at least two parties - you, the buyer, and the seller;
2. you must both agree on what you are buying, on how much you are paying for it, and on any other terms related to the purchase; and
3. there must be an exchange of promises. In other words, you promise to pay for the goods and the seller promises to deliver the goods.

Must a contract be in writing?

No. Not all contracts need to be in writing and signed. Many valid contracts are formed orally. When you buy a loaf of bread, you create a valid contract which is not in writing.

The law will enforce oral contracts if their existence and terms can be proven, unless they fall within the provisions of the Sale of Goods Act or the Statute of Frauds. For example, certain contracts for the sale of goods valued at over $50.00 or any contract concerning interests in land, must be in writing.

When signing a written contract, it is of the utmost importance to read it first. Unless it can be shown that the seller deceived you about the contents of the contract, the law will generally hold you responsible for all the terms in a signed written contract, whether you read it or not. This is also important if you are asked to sign a contract containing blanks to be filled in by someone else in your absence. It is best not to sign until the contract is completely filled in.

What is a standard form contract?

Sellers often use standard form contracts which have been drawn up in advance and which are used in all transactions of the same type. You are asked to sign the contract and thereby to agree to the seller's terms. In such a case, the seller may not be willing to change terms to which you object. Your options then may be either to sign the contract as it is or to go elsewhere. If the seller is willing to make changes, each change must be initialled or signed by you and the seller. It is also important to read the contract to see if the signature of some official other than the salesman is required for authorizing changes.

What rights does a contract give me?

It gives you the right to expect the seller to live up to the terms of the contract. Of course, the seller also has the right to expect the same of you. Ordinarily, once the contract is made, neither of you can properly change or break the contract without paying for the damage the other person has suffered. For example, you do not have an automatic right to return goods and expect a credit or refund. Credits and refunds are usually a matter of store policy.

Do I have any other rights?

Yes. In addition to the obligations the seller has because of his own promises contained in the contract, there are a number of additional obligations imposed upon him by the Sale of Goods Act.

(a) Title

The seller must have the right to sell the goods - he must have title to them - so that no one else can claim ownership of the goods after you have bought them. If you purchase goods from someone who has no right to sell them, and those goods are later taken away by the true owner, you are entitled to your money back from the seller. Unfortunately, often this right to recovery is empty as the seller or the money may be gone. Therefore, you should always check title prior to purchasing.

If the seller did have title to the goods, and as long as you met your obligations, such as regular payments, you should be able to use the goods without any interference from the seller or anyone else. Unless you have been notified by the seller of any outstanding charges on the property, no other person should have any claim to the goods. If it turns out that the seller did not provide you with clear title you may have a right to sue the seller for damages.

(b) Description

If you purchase goods which the seller has described to you, the goods must fit that description. For example, if you buy a TV described as having 'fine tuning', you can expect it to have fine tuning. If it does not, you may be able to reject the goods or sue for damages.

(c) Goods must be fit for their purpose

If the seller knows the purpose for which you are buying an item and the sale is within his normal course of business and you rely on the seller's judgment that it will be suitable, you can expect that the goods will be fit for your purpose.

In most cases, it is obvious why you are buying an article. For example, when you buy a car, the very nature of the article shows that you intend to drive it. The seller is presumed to know this. Whether new or old, if the car is not roadworthy, it is not generally fit for the purpose.

An exception to this arises when the buyer asks for something by its trade name. Then it is not the seller's fault if the item is not fit for the purpose, because he has complied with your specific request.

(d) Goods must be of merchantable quality

If the goods have anything wrong with them, the defect must not be so great that a reasonable person would not pay the full price for them. The goods should be useable for their ordinary purpose, or at least one of their ordinary purposes, having regard to the price paid.

An exception to this arises if you have had the opportunity to examine the goods before buying them. If the goods have a defect which you discovered, or should have discovered, during that examination, the seller will not be responsible for the defect. The law assumes that you have made an inspection and accepted the defective goods.

What if the seller doesn't meet his obligations?

If you have purchased goods which do not fit their description, are not fit for their purpose, or are not of merchantable quality, you may be able to return the goods and get your money back *AND* sue for any additional damages you have suffered.

In some circumstances you do not have the right to return the goods. If you have accepted the goods you cannot return them and get your money back. Generally the law considers that you have accepted something if you keep it for more than a reasonable period of time. For example, if you buy a toaster and use it for a month, you have accepted it. Your only right in such a case would be to sue for damages. If the item is seriously defective so as to have no useful value, you may be able to recover damages that are equal to the price of the item.

Can a seller avoid any of his obligations?

Yes. Most written contracts dealing with the sale of goods contain exemption clauses which exclude obligations created by the Sale of Goods Act respecting quality. Others may admit the seller's obligations but limit the amount of money which can be recovered if the seller does not meet them. They may be phrased so as to limit any warranties and conditions to those contained within the written contract itself. A stipulation that the goods are bought 'as is', particularly if the goods are second hand or used, has the same effect.

When these provisions form part of the contract, the buyer can no longer claim the protections specifically provided by the Sale of Goods Act. Because these provisions are contained in so many standard form contracts, it becomes apparent that the protection provided by the Act is limited. However, it should be noted that the seller cannot normally use exemption clauses to get out of obligations created by his own promises in the contract.

Will That Be Cash Or ....?

There are several methods of paying for goods and services when you do not have the cash to pay for them immediately.

Conditional sales agreements

Goods bought 'on time' or on credit are often under a conditional sales agreement with the seller. You get possession of the goods right away but you do not own or have title to them until you have made the last payment. If you do not make all the payments, the conditional sales agreement gives the seller the right to repossess the goods.

Chattel mortgages

A chattel mortgage is another way of paying for goods. When you use a chattel mortgage you give the seller or bank an interest in the goods you are buying. You get *ownership or title of the property* while you are paying off the debt. If you fall behind in making payments, the chattel mortgage gives the seller the right to seize the property or sue for the debt, and gives the bank the right to seize the property and sue for any deficiency if it is not the seller.

What if the goods I buy are subject to a chattel mortgage or conditional sales agreement already?

Chattel mortgages and conditional sales agreements must be registered at the Central Registry or the Motor Vehicles Branch of the Department of Consumer and Corporate Affairs. If they have been properly registered, the bank, the finance company, or seller still has an interest in the goods even though they may have been sold to a second buyer.

If you buy something which is already subject to a registered chattel mortgage or conditional sales agreement, and if the person who took out the chattel mortgage or conditional sales agreement fails to make his loan payments, the bank, or lender or seller, as the case may be, may seize the goods from you. However, if the chattel mortgage or conditional sales agreement has not been registered, the bank or lender or seller cannot have the goods seized from you UNLESS you knew there was a chattel mortgage or conditional sales agreement on the goods.

There is an exception for goods sold under a conditional sales agreement. Where a previous owner has engraved, painted, or affixed his name to the article in question, he need not register the conditional sales agreement to retain his rights. You, the new buyer, have the responsibility of contacting him to find out whether he still has a conditional sales agreement on the article.

In summary, it is important to check with the proper registry to see if there are any chattel mortgages or conditional sales agreements when buying goods in a private sale.

Credit

Buying things on credit is very common. Nearly all consumers have used credit at one time or another, whether by way of credit cards or by way of a credit agreement for an individual purchase.

However, there is a cost for using credit in the form of interest or carrying charges. If goods are purchased on credit, they will cost more than if they were purchased with cash. It is wise to pay off the balance owing as soon as possible. This will keep the amount paid in finance or carrying

charges to a minimum. Some credit schemes, such as some credit cards, charge no interest if the balance is paid off within a stated period of time.

Interest rates and other credit charges may vary depending on who is granting the credit.

How do I know the terms of the credit?

The Consumer Credit Transactions Act ensures that users of credit are fully informed of the terms in credit and loan agreements. Every credit agreement must spell out:

(a) date agreement is signed
(b) number, amount and due dates of installments
(c) cash price
(d) description and amount allowed for any trade-in
(e) amount of any down-payment
(f) amount of credit being granted
(g) any charges and the type of any insurance associated with the credit
(h) any fees or other additional charges
(i) total principal amount owing
(j) total amount of all credit charges as an annual percentage rate and in dollars and cents
(k) total amount to be repaid
(l) clear description of the goods including model or serial numbers, if any.

The credit grantor must give you a duplicate copy of the credit agreement before the goods are delivered. These disclosure requirements also apply to advertisements giving information on credit arrangements. If the credit grantor wishes to change the terms, these changes must be in writing and signed by you. You must be given a copy. The Act applies to most personal purchases that have interest charges associated with them. It does not apply to loans or sales to commercial and industrial enterprises, to loans for or sales of real estate, and loans made by pawnbrokers in the ordinary course of their business. It is not possible to contract out of the Act.

What if I want to pay it off early?

The credit grantor must give you, on request, a statement of the amount required to repay the debt or loan. However, you cannot insist that the credit grantor extend the prepayment privilege unless the credit or loan agreement so provides. Furthermore, the credit or loan agreement may stipulate an additional charge for the right to prepay the loan or debt early. Where interest is precomputed in the credit or loan charges, the credit grantor is entitled to retain part of the credit charges paid in advance even if the agreement does not expressly say so. However, the buyer will usually be entitled to a rebate on precomputed interest charges when he

pays off a purchase credit agreement or loan early. The amount of the rebate can be determined by asking the credit grantor or by calling Consumer and Corporate Affairs.

What if I am late with a payment?

Late payments are applied first to interest and then to the principal amount owed. Also, most loan or sale agreements contain acceleration clauses. These clauses say that in certain circumstances - for example, if you are late with your payments - the whole amount of the debt becomes due. You lose your right to pay over a period of time, and if you cannot pay the whole debt right away, the credit grantor may be able to seize the goods.

However, before any such clauses can become effective, and the whole debt can be demanded, the credit grantor must give you written notice, served on you personally or by single registered mail to your last known address and the loan can only be accelerated 10 days thereafter.

What if these rules are not followed?

A credit grantor who fails to comply with these provisions of the Act may be fined or imprisoned. He may also be disallowed the interest claimed and be required to repay interest collected over and above the amount reasonably allowable.

If you have problems with a credit agreement which does not comply with the Act, you should discuss them with the credit grantor. If this doesn't help, the provincial Department of Consumer and Corporate Affairs may be able to help.

REMEMBER: A credit agreement, whatever form it takes, is a contract like any other contract. Subject to the regulations which governments have placed on credit agreements, you are bound by the terms of the agreement.

Co-signing loans

Sometimes the lender will require you to have another person sign the loan agreement. This means that if you default in your payments, the lender has two people he can go after. In other words, the lender can sue you both and, on getting judgment, seize the property and garnishee the wages of both you and your co-signer.

Interest rates

There are some laws which limit the amount of interest a lender can charge. For example, under the Criminal Code, it is a criminal offence for a lender to charge a 'criminal' rate of interest. This means an annual rate of interest which exceeds 60% on the credit advanced under the agreement. The maximum punishment for such an offence is imprisonment for 5 years or on

summary conviction, a fine of not more than $25,000, 6 months in jail, or both.

The Interest Act limits the amount of interest a lender can charge to 5% in situations where the annual rate of interest is not disclosed in the proper manner. The borrower can refuse to pay more interest than this and can get his money back if he has. If there is a failure to properly disclose the annual or semi-annual rate of interest payable on a mortgage of real estate, the borrower is exempt from paying any interest at all, and can recover interest already paid.

There is also some protection available to Alberta consumers in the Unconscionable Transactions Act. The Act gives the courts the power to look into any loan agreement - even loans which have been paid off - to determine whether the credit charges were too high under the circumstances. The courts may order the lender to repay excessive credit charges.

To benefit from the provisions of this Act, you must take the lender to court, or you may use the Act to defend yourself if the lender takes you to court for not paying the debt. If either of these situations arises, legal advice should be obtained.

Cheques

Because cheques are not legal tender in Canada, a seller does not have to accept payment by cheque. Acceptance by a seller of a cheque is a matter of privilege, not a matter of right. If a seller receives an N.S.F. cheque, he is entitled to inform the police who can have the writer of the cheque charged with obtaining goods by false pretences.

CONSUMER AWARENESS

Advertising

Advertising is an invitation to potential consumers to purchase advertised goods. Advertisements can be general, that is, an invitation to shop at a particular store, or they can be specific, that is, an invitation to purchase specific goods at specific prices.

In Alberta, advertising is controlled by Alberta's Unfair Trade Practices Act, Consumer Credit Transactions Act and the federal Competition Act. The Unfair Trade Practices Act attempts to protect consumers from unfair business practices, and to protect businesses from unfair competition.

The federal Competition Act is also consumer protection legislation designed to promote fair competition and truth-in-selling in the marketplace.

Complaints relating to unfair advertising can be made to the Alberta Department of Consumer and Corporate Affairs.

Door-to-Door Sales

Direct or door-to-door sales are controlled by the Direct Sales Cancellation Act. The Act applies to sales made elsewhere than the business premises of the seller. The Act gives you, the buyer, the right to cancel an agreement made in these circumstances. The agreement must be for an amount greater than $25.00. It must be cancelled within 4 days after receiving a copy of your agreement. You should notify the seller in writing of your intention to cancel. You are entitled to keep the goods until the seller refunds the purchase money.

In the case of an agreement under which goods are not delivered for 120 days and no date for delivery is specified, the period for cancellation is one year. If there is a specified delivery date, and the goods have not been delivered within 30 days of that date, you can cancel the agreement anytime within 180 days after the date the goods were supposed to be supplied. You can also cancel a contract where the seller was required to be licensed but was not.

Credit Cards

The Consumer Credit Transactions Act now provides that no unsolicited credit cards may be forwarded to a consumer.

Also, you are not responsible for unauthorized purchases made on your credit card which are over $50.00 or the amount stated in your credit agrement, which ever is less, after you have advised the credit card company of the loss of the card.

All terms of the credit card agreement must be clear including your maximum credit limit and any annual fees associated with the card.

Tax Discounters

If you utilize the services of an income tax discounter, the discounter must have obtained a special certificate to operate as a tax discounter, full disclosure must be made to you as to how much income tax you are entitled to receive and what his fee is in relation to the discount associated with your tax return.

Charitable Donations

Alberta's Public Contributions Act requires any organization wishing to obtain funds for a charitable purpose to obtain the authority under the Act. Those organizations authorized to solicit charitable donations are listed with the provincial government, the Better Business Bureau, and the City Halls of Edmonton, Red Deer, and Calgary.

The Rights of Creditors Collecting Debts

Your major responsibility as a consumer is to pay for the goods supplied by the seller. If you fail to do so, the seller or the creditor has the right to pursue you for payment. This pursuit can include written notices, telephone calls, letters, collection agencies, and if all else fails, legal proceedings.

If the seller or creditor uses a collection agency, that agency must comply with Alberta's Collection Practices Act which has provisions to prevent undue harassment of a debtor. It is also a violation of the Criminal Code to use extortion to obtain payment.

If the seller or creditor decides to resort to legal proceedings, you can expect a demand letter, that is, a letter demanding payment, with a warning that if payment is not received within a certain number of days, legal proceedings will be commenced. If you still do not pay, you can expect to receive a Small Claims Summons or a Statement of Claim. Once the matter goes to court and the seller obtains a judgment in his favour, he can then take steps to enforce the judgment. This can mean seizing some of your property and selling it, garnisheeing your wages and attaching the judgment to your assets.

Insurance

Insurance is a method of spreading the risk of loss. Large sums of money are pooled and are used to compensate for a loss.

A contract of insurance is one in which the insured, the person buying the insurance, pays money, his insurance premium, to the insurer, the insurance company providing the coverage. In return, the insurer promises to compensate the insured for any loss the insured may suffer which is covered by the insurance policy.

Insurance comes in many forms and covers many types of losses. Some of the more common types of insurance are car insurance, home insurance, life insurance, and accident and disability insurance. Some insurance is government administered, for example, health care insurance, unemployment insurance and worker's compensation. Some other more specialized types of insurance include professional liability insurance, business loss insurance and air travel insurance. There are many more.

Insurance contracts are not uniform. They vary from insurer to insurer. Because of this you should shop around to find insurance which most closely suits your needs.

Funerals

From a consumer perspective, the making of funeral arrangements is a significant consumer purchase that you and your family are required to make.

The matter is more difficult than other large consumer transactions because of the emotional trauma involved, as well as the lack of sufficient time and knowledge to allow you to make a informed decision. For this reason it is advisable to make funeral arrangements before the need arises. In Alberta the Pre-arranged Funeral Services Act governs pre-need funeral contracts, and the Cemetaries Act governs pre-need cemetary services and supplies. As with any other consumer transaction, care must be taken when entering into such arrangements.

If you do not make any prior arrangements and suddenly find yourself faced with the task of arranging a funeral, the following matters should be considered

- the cost of burials v. cremations
- the need for embalming
- the cost of transportation
- the cost of funeral home services
- the cost of incidentals, such as flowers
- death certificates, newspaper notices, cards, guest lists, anatomical gifts

For information about funeral arrangements contact the Alberta Funeral Information Services in Edmonton at 5403 - 10th Avenue, phone 463-5985, or in Calgary at 105, 2116 - 27th Avenue N.E., phone 230-2155.

ADDITIONAL MATERIALS

1. BOOKS

BUSINESS LAW IN CANADA. By Richard A. Yates. Scarborough, Ontario: Prentice-Hall, 1985.

CANADIAN MARKET PLACE: A CONSUMER RIGHTS HANDBOOK. By Michael J. Trebilcock and Patricia McNeill. Montreal: CBC Enterprises, 1983.

CONSUMER COMPLAINTS: A SELF-HELP HANDBOOK. By Alberta Department of Consumer and Corporate Affairs. Edmonton: The Department, 1987.

2. PAMPHLETS

(a) GUIDE TO CONSUMER LAW IN ALBERTA. Edmonton: Student Legal Services (University of Alberta), 1986.

(b) DIAL-A-LAW TRANSCRIPTS. Calgary: Calgary Legal Guidance, 1981.

- Buying on Time - Conditional Sales Agreement
- Door to Door Sales - Direct Sales
- The Unfair Trade Practices Act
- Chattel mortgages
- Contract Services and Sales
- Credit Cards

3. AUDIO-VISUAL

(a) CONSUMER LAW, PART ONE AND TWO. By Colin MacLean. Edmonton: Access Radio CKUA, 1983

4. PERIODICALS

(a) CANADIAN CONSUMER. Ottawa: Consumers Association of Canada. 1980-.

7. CRIME

Studies have shown that the elderly person is more vulnerable than others to crime, and less able to cope with the consequences of crime. Diminished physical strength and mobility, existence on limited, fixed incomes, dependency on public transportation, residence in low-income high-density and often high-crime areas, isolation, loneliness, and predictable behavior patterns, are all factors which make crime a special problem for the elderly.

Are there any crimes which particularly affect the elderly?

Yes. Certain crimes against property, crimes against the person, and consumer frauds are all crimes which affect elderly persons more so than other crimes.

What are property crimes?

Property crimes are those crimes which result in damage to or destruction of your property, as well as crimes which deprive you, the rightful owner, of your property. Property crimes include mischief, arson, breaking and entering, and theft.

Mischief is basically the wilful damage to or destruction of property. It is often referred to as vandalism.

Arson occurs when someone wilfully sets fire to property, be it their own property or someone else's.

Breaking and entering occurs when someone breaks a door or a window, for example, and thereby enters your home for the purpose of stealing, damaging or destroying your property, or of harming you. It is also a crime for someone to enter your home without your permission, even if they did not have to break in, for example, if you did not lock your doors and windows.

Theft occurs when you have been unlawfully deprived of your property. Purse-snatching, where no violence is used, is an all too common example of theft from elderly women.

What are crimes against the person?

Crimes against the person include common assault, assault causing bodily harm, manslaughter, murder and robbery. Another crime which falls within this category and often affects the elderly is the indecent, harassing or threatening telephone call.

Assault occurs when someone intentionally and without your consent applies force to you, or attempts or threatens to apply force to you. Assault is often referred to as mugging. Common assault is an assault

which does not cause bodily harm. An assault which does cause bodily harm is more serious, and can result in a more serious punishment. Assault with intent to commit another crime, for example, theft or rape, can also result in a more serious sentence.

Manslaughter occurs when someone unintentionally causes death or bodily harm resulting in death.

Murder occurs when someone intentionally causes death or intentionally causes bodily harm which does cause death.

Robbery is both a property crime and a crime against the person. It occurs when someone steals using violence or threatening to use violence. Purse-snatching is robbery if violence is used or threatened.

Illegal telephone calls include indecent or obscene calls and harassing calls where the caller has no lawful excuse to be bothering you. A lawful excuse might include an unpaid debt, as for example when a collection agency calls to try and collect money from you on behalf of their client and your creditor.

It is also a crime to use the phone to threaten your personal safety or the safety of your property.

If you are a victim of an illegal telephone call, contact the police. They may advise you to contact the telephone company who may be able to have the call traced.

How can I protect my property against crime?

The best protection against property crimes is to make your home secure. Keep your doors and windows locked. Lock your garage. Keep entrances well lit. If you live in an apartment ensure that there is a good security system for the building as well as good locks on your apartment door, and on your balcony or patio door. Use automatic timing devices for lights when you are out or away. Let your neighbours know when you will be away on holidays. Cancel deliveries when you will be away. Have someone shovel your walks or cut your lawn when you are planning an extended vacation. In short, make it look as though there is always someone at home.

Get to know your neighbours by participating in Neighbourhood Watch programs. There is also Operation Identification. These are part of the Alberta Solicitor General's Crime Prevention Program. Under Operation Identification you identify your valuable property by engraving it with your driver's license number or your social insurance number. Engraving pencils can be borrowed from the police or purchased for about $10 from most department stores. Decals indicating your participation in the Operation Identification/Neighbourhood Watch program are then placed on your doors and windows. The decals are available from your local police.

Once stolen property is recovered by police, it can be registered by the engraved numbers on a nation-wide crime computer (C.P.I.C.). This enables police across the country to match stolen property to rightful owners. The Operation Identification program is based on the idea that a would-be thief is less likely to steal identifiable property.

Neighbourhood Watch encourages people living in the community to become involved in the security of their neighbourhood. The program involves neighbours watching each other's property and reporting anything suspicious to police.

Information about these programs can be obtained by contacting the Alberta Solicitor General or your local police.

How can I protect my person against crime?

Personal security, like home security, is a matter of common sense. Avoid situations where crime is likely to occur. Be alert. Lock your doors and windows. Don't open your door to strangers. Install a peephole in your door. If you live in an apartment, be careful in laundry rooms, stairways, elevators and underground parking lots. Don't go out alone at night. Don't make yourself easy prey for pick-pockets and purse-snatchers. Don't flash credit cards or cash. If you live alone, don't advertise the fact, especially if you are female. Put only your initials and last name in the phone book or on your mailbox. In short, be cautious and be sensible.

In both Edmonton and Calgary the Police Departments have special programs to educate and assist senior citizens in the protection of themselves and their property against crime. In Edmonton the program is called Senior Power and information can be obtained by calling 421-3424. In Calgary the program is called Senior Citizens Safety and Security Unit. For further information call 268-5980.

What are consumer frauds?

Consumer frauds are crimes in the marketplace. The Canadian Criminal Code says that everyone who uses deceit, falsehoods or other fraudulent means to defraud anyone of property, money or valuable security is guilty of fraud.

The types of consumer frauds are many and varied: free offers, phoney contests, mail order schemes, pyramids, chain letters, home repair and renovation deals, get-rich-quick investment schemes, charitable solicitation frauds, some door-to-door sales, health cures, and health equipment. It has been said that the forms of fraud are limited only by the imaginations of the perpetrators.

How can I protect myself against consumer frauds?

Probably the best advice is simply to be wary. Ask for identification from door-to-door salespeople. Don't take things at face value. Do not believe everything the smooth-talking salesperson tells you. Do not sign documents in haste. Read everything thoroughly. Think about it for a few days before signing. Compare the deal offered with what's available in stores. Don't give in to high pressure tactics. Talk things over with your spouse, son, daughter, or your lawyer. Call the Better Business Bureau or Alberta Consumer and Corporate Affairs to find out about the particular business which is trying to sell you their scheme or their product. If you doubt the legality of the scheme, call the police. Remember fraud is a crime. You may protect others as well as yourself by reporting a fraudulent operator.

What can I do if I am a victim of crime?

If you have been a victim of a crime against your person and you have suffered some personal injury, you can make a claim to the Crimes Compensation Board. They will conduct a hearing into your claim and can make an award to compensate for expenses directly related to your injuries. These include lost income, medical and dental expenses, expenses for damage to clothing and eyeglasses, and transportation costs incurred to attend the hearing. The Board can also make an award for loss of future earnings if your injuries have interfered with your ability to work. Awards can also be made to your dependents if you die as a result of your injuries.

The Crimes Compensation Board is located in Edmonton at 7th floor, 10365 - 97th Street, phone 427-7217. The Board sits once a month in Edmonton and Calgary, and on a less frequent basis in other centres in the province.

You can also sue the person accused of committing the crime against you. If you recover any money from the offender as a result of your lawsuit, you will have to repay the Crimes Compensation Board if you have received an award from them.

If you have suffered a loss because of a property crime, the Crimes Compensation Board cannot help you. You will have to sue the offender to recover the losses which you suffered because of the crime. Such a lawsuit is a civil action separate and apart from the criminal prosecution of the person accused of the crime. If your lawsuit is successful the court will award you damages to compensate for the loss you have suffered.

In certain circumstances the criminal court can order that the stolen property be returned to you. Where that is not possible, they can order the accused to pay you compensation for the loss you have suffered.

Where you have been a victim of a consumer fraud, if you wish to be compensated for your losses, you will again have to sue the perpetrator of the fraudulent scheme.

ADDITIONAL MATERIALS

1. BOOKS

CRIMINAL PROCEDURE IN CANADA. By Michael P. Bolton. 8th. ed. Vancouver: International Self-Counsel Press, 1987.

CRIME PREVENTION HANDBOOK FOR SENIOR CITIZENS. By Calgary Police Service Community Services Section. Calgary: The Service, 1983.

VICTIMS OF CRIME. In Resource News 7 (June 1983).

VICTIMIZATION AND FEAR OF CRIME AMONG THE ELDERLY. By Yves Brillon. Toronto: Butterworths, 1987. (Perspectives on individual and population aging).

2. PAMPHLETS

(a) CRIME PREVENTION IS... By Edmonton (Alberta) Police Department. Multicultural Relations Unit. Edmonton: The Department, 1987.

(b) Help Prevent Crime Series. Edmonton: Department of the Solicitor General, 1981.
- Help prevent crime: stop vandalism.
- Help prevent crime: arrest arson.

(c) PERSONAL SAFETY: A GUIDE TO SEXUAL ASSAULT PREVENTION. By Alberta Department of the Solicitor General. Edmonton: The Department, 1987.

3. AUDIO-VISUAL

(a) CRIMINAL JUSTICE SYSTEM: AN INTRODUCTION. (videorecording). Edmonton: Access Alberta, 1982.

(b) PARTNERSHIP IN CRIME PREVENTION. (videorecording). Vancouver: Public Legal Education Society of British Columbia, 1985.

(c) CRIME AND THE ELDERLY. (videorecording). By Senior Citizens' Provincial Council. Regina: Saskmedia, 1980.

(d) VICTIMS OF CRIME. (videorecording). Vancouver: Public Legal Education Society, People's Law School, 1986.

4. PERIODICALS

(a) CANADIAN JOURNAL OF CRIMINOLOGY. Ottawa: Canadian Association for the Prevention of Crime, 1980-.

(b) BULLETIN. Ottawa: Canadian Association for the Prevention of Crime, 1979-.

8. HEALTH

Health care is expensive. It is especially expensive for people on limited and fixed incomes. Health care insurance, hospital benefits, and other health services are therefore important issues to senior citizens. This section on Health outlines the health benefits available to senior citizens in Alberta. It also contains brief discussions of the doctor-patient relationship and consent to medical treatment.

HEALTH BENEFITS FOR SENIOR CITIZENS IN ALBERTA

Senior citizens in Alberta receive health care coverage under the Alberta Health Care Insurance Plan, the Alberta Blue Cross Plan, and the Extended Health Benefits Program. Once you reach the age of 65, neither you nor your spouse (or other dependents, if you have any) are required to pay premiums for Alberta Health Care or for Alberta Blue Cross, as long as you are properly registered. You can also obtain further health care benefits which are partially paid for under the Extended Health Benefits Program.

How do I register for Alberta Health Care?

If you were covered by Alberta Health Care before you turned 65, they will send you a form to complete to prove you are 65. If you have not received this form, call the nearest Alberta Health Care office. Once you have completed the form and returned it with proof of your age, for example, your birth certificate, you and your spouse will no longer have to pay the Alberta Health Care premiums. You will also be automatically covered by the Alberta Blue Cross Plan.

If you have never been registered with Alberta Health Care, for example, if you have just moved to Alberta, you and your spouse are still entitled to senior citizen's benefits once you have become registered under the Plan. To become registered, contact the nearest Alberta Health Care Office.

What type of health care is covered by the Alberta Health Care Insurance Plan?

Alberta Health Care pays for your visits to your general practitioner and your specialist. This includes dental surgery by a dental surgeon. Health Care also covers chiropractic care, foot care, eye examinations, physiotherapy, and the admission fee to hospitals. There are certain maximum amounts for some of these services beyond which Health Care does not pay. Health Care also does not cover any balance billing charges by your doctor.

What does the Alberta Blue Cross Plan cover?

Blue Cross will cover 80% of the cost of your prescription drugs and the costs of ambulance service according to the Alberta fee schedule. You can also be reimbursed by Blue Cross if you or your dependents require a clinical psychologist or a naturopath to the extent of $100 per family per year. Home nursing costs are presently covered to the extent of $200.00 per year. Blue Cross will also pay for certain appliances such as artificial eyes and limbs, and supporting braces.

Blue Cross will not, however, assist with the cost of a semi-private or private room in an auxilliary or general hospital unless prior to admission you obtain from your doctor a letter indicating that such accommodation is medically required. As there are these limitations on the amount of coverage for some of these services, as with Alberta Health Care it would be wise to contact your local Blue Cross office to determine exactly what you are entitled to under the plan.

What does the Extended Health Benefits Program cover?

The Extended Health Benefits Program assists senior citizens in paying for eyeglasses, dental care and dentures, hearing aids, some surgical supplies and appliances (for example canes, crutches, syringes) and medical equipment (for example respiratory equipment, wheelchairs). Again there are limits of coverage, so you should contact the nearest Alberta Health Care office to determine if your health care needs are covered by the program.

Are there any other health services available?

There are some health services which may be available to you in your home. There is some coverage for these, but again this depends on the type of service and the amount required. These services include Home Care, visits by community health nurses, Meals-on-Wheels, and visits by the Victorian Order of Nurses.

What about Auxiliary Hospitals and Nursing Homes?

Alberta Blue Cross will pay for a certain amount of the cost of staying in an auxilliary hospital. The same coverage also applies to nursing homes BUT ONLY IF the nursing home is registered as an auxilliary hospital. You should check with Blue Cross to find out if the nursing home or auxilliary hospital you are interested in is covered.

Do my relatives have any responsibility to take care of me?

Yes. In Alberta the Maintenance Order Act requires your spouse or your children to provide you with food, clothing, shelter and medical aid if you are no longer able to do so. However, the Act only requires this support if your relatives are themselves able to provide it.

Does my health affect my driver's licence?

Yes. In Alberta the Motor Vehicle Administration Act requires that a person of the age of 75 years or more must file a medical certificate signed by a physician and must take a vision test given by a driver examiner. This applies whether you are renewing your licence or are applying for a licence for the first time. How often you must renew your licence once you reach the age of 75 will depend on the result of your medical and vision tests. The renewal or issuance of the licence may also be "under any conditions and for any period" the Minister considers advisable.

THE DOCTOR-PATIENT RELATIONSHIP

A relationship does not exist between you and your doctor until you ask for the doctor's services and the doctor agrees to treat you. A doctor does not have to accept you as a patient, even though there may be no other doctor available. Once the doctor has agreed to treat you, he has a duty to use reasonable care, skill, and judgment. This means that your doctor must treat you in the manner required by good medical practice. It does not mean that he is an insurer of your health. He does not guarantee that the treatment will necessarily be successful, only that he will do his best according to the standards expected of a physician of his training and experience.

The relationship which arises between you and your doctor is not necessarily a permanent one. Both of you are free to end the relationship. You are free to dismiss your doctor whenever you wish, for whatever reason. Your doctor, however, should give you notice that he will no longer be treating you, in order to give you an opportunity to find another doctor.

Do I have the right to my medical records?

As far as ownership is concerned, your doctor owns the office records or charts he keeps about you, and the hospital owns the records it keeps about you. In the case of hospital records, the Hospitals Act says you have the right to see them and to obtain a copy of them. However, in the case of a doctor's office records, there are arguments both ways as to whether or not you have a right to see them. In both cases the records are compellable evidence. This means that the court can order that the records be made available as evidence in a court proceeding.

CONSENT

What does consent mean?

When we speak of consent in relation to health care, it means the permission you give your doctor or the hospital to carry out the prescribed or suggested treatment.

Consent can be given verbally or in writing. It can be implied. For example, when you open your mouth you are impliedly consenting to allow the doctor to examine your tonsils.

Consent must be given voluntarily. This means that your consent is not valid if you give it under duress or because of pressure from someone else.

Your consent must also be informed. You must first tell your doctor all of the information you have about your complaint. He will then decide on the best treatment, and then he must inform you of the nature of that treatment, and of the risks and consequences involved. If you don't understand, don't be afraid to ask for further explanations. Once you understand, you then have the right to accept or reject that treatment. You and your doctor should discuss the extent of the consent. In other words you should understand the entire nature of the treatment. You should also find out who will be performing the procedures. If you want only your doctor to treat you, you should specify this. If your treatment requires hospital admission, the consent form you sign might authorize other medical staff to treat you. Discuss this with your doctor.

You must have the legal capacity to consent. A person of unsound mind is unable to give informed consent and thus does not have the legal capacity. Someone else, for example, a guardian appointed under the Dependent Adults Act, will have to give the consent on behalf of the dependent adult. In an emergency situation, the person can be treated without giving consent under Alberta's Emergency Medical Aid Act. The Act provides for such treatment to be given without the patient's consent if in the opinion of 2 physicians the person needs the treatment or aid, and is unable to understand and give consent because of a mental or physical disability.

What do hospital consent forms say?

When you are admitted to a hospital you are usually required to sign a form consenting to the treatment your doctor has prescribed. The form and content of consent forms varies from hospital to hospital. Consent forms should be read carefully before signing.

What if I am unconscious or so ill that I cannot give consent?

In emergencies no consent is required. Under Alberta's Emergency Medical Aid Act if you are ill, injured or unconscious as a result of an accident or some other emergency, and you are unable to consent to the necessary treatment, and have not indicated a refusal to consent, a doctor, registered nurse or other registered health occupation member can go ahead and treat you without your consent. The Act also allows anyone

else to administer first aid at the scene of the accident or the emergency without your consent if you are unable to give or withhold it.

REMEDIES

In a situation where the doctor has failed to provide the proper medical care as required by law, or where you have not been given the opportunity to withhold or to give consent, you have two courses of action available in addition to that of dismissing your doctor. You can report your doctor to the College of Physicians and Surgeons, which is the disciplinary body of the medical profession. They will investigate the complaint and determine if your doctor should be disciplined. You can also sue your doctor in the civil courts, alleging that he was negligent in his treatment of you and that you suffered some damage as a result. You can also sue for assault, battery or trespass to the person if you have been treated without having given the proper consent.

ADDITIONAL MATERIALS

1. BOOKS

AGING WITH LIMITED HEALTH RESOURCES: PROCEEDINGS OF A COLLOQUIUM ON HEALTH CARE. By Economic Ccouncil of Canada. Ottawa: The Council, 1987.

CANADIAN PATIENT'S BOOK OF RIGHTS. By Lorne Elkin Rozovsky. Toronto: Doubleday Canada Limited, 1980.

EVERYTHING YOU ALWAYS WANTED TO KNOW ABOUT SERVICES FOR SENIORS. By West-10 Community Services. Edmonton: West-10 Community Services, 1987.

PROGRAMS FOR SENIOR CITIZENS. By Alberta. Department of Social Services and Community Health. Edmonton: The Department, 1986.

2. PAMPHLETS

a) PATIENTS' RIGHTS. By Public Legal Education Association of Saskatchewan, Saskatoon: The Association, 1986.

b) SENIORS AND THE LAW. By Public Legal Education Association of Saskatchewan. Saskatoon: The Association, 1985.

3. PERIODICALS

(a) MEDICAL LEGAL QUARTERLY. Downsview: Jonah Publications, 1979-.

9. THE DEPENDENT ADULTS ACT

The Dependent Adults Act has been in force in Alberta since December 1, 1978. It was designed to provide a system of support and protection for adults whose status of health, physical or mental or both, are such that some assistance in personal or financial matters is necessary. The Dependent Adults Act provides two means by which a dependent adult can receive such assistance. One is guardianship, dealing with the care of the person, the other is trusteeship, dealing with a person's estate.

In relation to the elderly, applications for guardianship and trusteeship orders are made where the older person is no longer capable of taking care of his or her affairs, personal and financial. Often the elderly man or woman is living in a nursing home, auxilliary hospital, or some other type of institution. He or she may have become too confused to handle financial matters, or to give the required consent for medical treatment, or to make other decisions relating to his or her personal affairs. In these situations it is usually a family member who makes an application to the court to be appointed to make these sorts of decisions on behalf of the elderly relative.

Who is a dependent adult?

A dependent adult can be anyone 18 years of age or older, who is unable to care for himself or herself, is unable to make reasonable judgments in some or all matters relating to him or herself, and has been shown to be in need of a guardian and/or trustee. This need must be established by a report from a physician or a psychologist. The report must give specific reasons why the adult in question is in need of a guardian. The court (the Surrogate Court of Alberta, which has jurisdiction to hear applications for both guardianship and trusteeship) must also be satisfied that the person for whom the application is being made will substantially benefit from the appointment of a guardian and that a guardianship order will be in the best interest of the proposed dependent adult.

The requirements are similar when an application for trusteeship is made, except rather than determining whether the adult would substantially benefit from the appointment of a trustee the court simply determines if the adult is in need of one, a less onerous test. It need not be shown that the dependent adult is unable to care for him or herself. This is because trusteeship relates to the dependent adult's financial affairs, not his or her personal care.

GUARDIANSHIP

The first part of the Dependent Adults Act provides for the appointment of a guardian to take care of the personal affairs of the dependent adult. It gives the guardian the authority to make decisions on behalf of the dependent adult.

What can a guardian do?

A guardian can be appointed to assist the dependent adult with some or all of the following matters:

(a) temporary or permanent residential and living arrangements
(b) a decision as to with whom adult is to live or consort
(c) social activities
(d) employment
(e) education and training
(f) the obtaining of licences and permits
(g) legal proceedings which do not relate to the dependent adult's estate
(h) health care
(i) daily living routine
(j) any other decisions important to the welfare of the dependent adult.

The guardianship order which is granted will give only those powers totally justifiable under the circumstances. It is the intent of the Act that the guardian exercise his or her authority in such a way as to encourage the dependent adult to assume as much responsibility for him or herself as possible. The intent is to ensure that no rights are taken which the dependent adult can handle himself or herself. The Dependent Adults Act further states that "a guardian shall exercise his power and authority...in the least restrictive manner possible."

Who can be a guardian?

The Dependent Adults Act states that "any interested person" may apply for an order appointing a guardian. "Interested person" is defined rather broadly to include the Public Trustee, the Public Guardian or any other person 18 years of age or older who is concerned with the welfare of the adult in respect of whom the application is made. However, eligibility to become a guardian is a matter which is somewhat more restricted. The Act provides that a guardian must be an adult and must consent to act as a guardian. The Act further states that the Court must be satisfied that the guardian:

(1) will act in the best interests of the dependent adult;
(2) will not be in a position where his interests conflict with the dependent adult's interests. (NOTE: The Act makes it clear that a person will not be considered to be in a conflict of interest

position by reason only that the person is a relative or a potential beneficiary of the dependent adult);

(3) is a suitable person to act as the guardian of the dependent adult;

(4) is a resident of Alberta; and

(5) is able to act as a guardian

The Court may require the person proposed as guardian to attend in court and answer questions to determine if he or she meets the requirements. If the court is not satisfied that the proposed guardian would be suitable, it may appoint the Public Guardian.

The Public Guardian is an official of the Alberta Department of Social Services and Community Health. Where the Public Guardian is of the opinion that a person is in need of a guardian but there is no one able, willing or suitable to act as guardian, the Public Guardian must apply to the Court for an order appointing himself, or someone else, to act as guardian.

What is the procedure for appointing a guardian?

The application for a guardianship order is one which should probably be made by a lawyer. It is a technical procedure which requires the making of a formal application to the Court. The application must be accompanied by a physician's or psychologist's report specifying the reasons a guardian is needed. The Court also requires the written consent of the person proposed as guardian.

The proposed dependent adult is entitled to be served at least 10 days before the application with a copy of the application for a guardianship order. He or she is also entitled to be present and to make representations at the guardianship hearing. The Court may dispense with the requirement for service on the proposed dependent adult. However this happens very rarely and only where it can be shown that it would be in the best interests of the proposed dependent adult that they not be served, for example, where it would be harmful to their health or safety.

What does a guardianship order say?

A guardianship order sets out the name of the guardian (or guardians) and specifies the matters over which the guardian is to have authority (see What Can a Guardian Do?). It may also specify the date on or before which the order must be reviewed. The order also deals with certain procedural matters such as service, notice, and the costs, fees and expenses related to the application for the guardianship order.

In addition to the powers granted in a guardianship order, the Dependent Adults Act makes certain provisions which assist the guardian in his or her duties. The Act gives the guardian the authority to "sign and do all things necessary to give effect to" the terms of the guardianship

order. The Act further allows the guardian to purchase "necessaries" (food, clothing or shelter) for the dependent adult, without the consent of the dependent adult or the trustee, if there is one. The guardian is entitled to be reimbursed for money spent in purchasing necessaries. If the guardian is required to sign a contract on behalf of the dependent adult, the Dependent Adults Act states that the contract is binding even after the guardianship order has expired, as if the dependent adult had made it as a capable adult.

If the guardian is unsure of what to do in a certain situation the Dependent Adults Act allows the guardian to apply to the Court for the opinion, advice or direction of a judge on any matter relating to the dependent adult.

How long does a guardianship order last?

The Dependent Adults Act provides that the Court must specify the time within which the guardianship order must be reviewed but no later than 6 years after the date of order or review, as the case may be. Also, the court will specify who is required to apply for the review and any requirements that person or the guardian must comply with for a review. The dependent adult or any other interested person may apply for a review at any time.

At a review the Court will consider whether the guardian has properly exercised his or her authority according to both the requirements of the Act and the guardianship order. The Court may decide to continue the order or to end it but it must be shown that the guardianship is still justifiable in the circumstances. It may also change the order or replace it.

Can a guardian ever be discharged?

The guardian or any interested person may apply to the Court for an order discharging the guardian. The Court can then decide whether or not the guardian should be allowed to continue acting as a guardian. In any of the following circumstances the Court can make an order discharging the guardian:

(1) if the dependent adult is no longer in need of a guardian,
(2) if the guardian is unwilling or unable or refuses to act or continue to act as guardian,
(3) if the guardian fails to act as guardian or fails to follow the guardianship order,
(4) if the guardian acts improperly or in a manner which may be harmful to the dependent adult,
(5) if the guardian is no longer suitable, or
(6) if the guardian is no longer an Alberta resident.

What happens if a guardian dies?

In the situation where the original guardian dies, then the alternate guardian, if one has been previously appointed, becomes the guardian. Where there is no alternate guardian, the Public Guardian becomes the guardian of the dependent adult until a new guardian is appointed or the Public Guardian is discharged.

A guardian may also be appointed to attend to the matters in the order, for any temporary absence of the original guardian.

TRUSTEESHIP

Part 2 of the Dependent Adults Act provides for the appointment of a trustee to look after the estate of the dependent adult. The trusteeship provisions are very similar to the guardianship provisions with respect to who can become a trustee, how a trustee is appointed, the review of the trusteeship order, discharge of a trustee, and alternate trustees. The major difference between trustees and guardians relates to what they do.

What can a trustee do?

A trustee has the power to maintain and preserve a dependent adult's estate through control of the dependent adult's financial matters, property as opposed to his or her personal matters. The trusteeship order made by the Court can specify both the authority of the trustee and the manner in which this authority can be exercised. This can include the right to take possession and control of all property, to lease, sell or transfer property, deposit money or invest money, write cheques, cash bonds, settle debts, settle court actions, carry out contracts and generally, carry on business or manage the property on behalf of the dependent adult. A trustee may also dispose of personal property without Court approval, to a maximum of $10,000 during the trusteeship period.

Does a trustee have any other duties?

As with a guardianship order, a trusteeship order must specify the time within which the order must be reviewed, which must be not later than 6 years after the date of the order. However, a trustee also has the duty to "pass his accounts." This he must do every two years or four years in the case of very small estates of less than $10,000 where there is little activity. The procedure involves obtaining court approval of the accounts of the dependent adult's estate. The Court decides how accounting will be done on the termination or discharge of a trustee. A personal representative may ask for an accounting to be done similar to a request by the beneficiary of an estate.

Who is the Public Trustee?

Like the Public Guardian, the Public Trustee is a government official who will act as trustee where there is no one else available or suitable. The Public Trustee will also act as trustee where the original trustee has died and no alternate has been appointed. When taking over the office of trustee, the Public Trustee may require an accounting from the previous trustee.

Can a trustee be appointed without a court order?

Part 4 of the Dependent Adults Act provides for a certificate of incapacity for a dependent adult who is resident in one of the following facilities in Alberta:

Alberta Hospital, Edmonton
Alberta Hospital, Ponoka
Baker Centre, Calgary
Claresholm Centre, Claresholm
Eric Cormack Centre, Edmonton
Michener Centre, Red Deer
Raymond Centre, Raymond
Rosehaven, Camrose

A certificate of incapacity is issued by two physicians who are of the opinion that the adult in question is unable to make reasonable judgments about his or her estate. The Public Trustee then becomes the trustee of the dependent adult. The Public Trustee shall have the certificate of incapacity reviewed at least once every two years. Upon review, the order shall specify the time within which it must be reviewed, but again, no longer than 2 years from the said review.

The Public Trustee and dependent adult for whom the certificate has been made, or the person's nearest living relative in Canada, shall then be notified of the issuance of the certification.

The dependent adult, the guardian, or if there is no guardian, the dependent adult's nearest living relative in Canada, the Public Trustee, the person in charge of the institution if the dependent adult is resident of an institution, and the Public Guardian all have the right to bring or receive notice of a review to terminate the certificate of incapacity. It is also possible to replace the Public Trustee with a friend or relative of the dependent adult by making a trusteeship application.

WHAT IS COMPULSORY CARE?

The Dependent Adults Act provides for the granting of a compulsory care order. Such an order can only be made where a guardian has been appointed. A compulsory care order grants the authority to confine a

dependent adult to a place of care for a period of up to three years. Places of care in Alberta include

Alberta Hospital, Edmonton
Alberta Hospital, Ponoka
Baker Centre, Calgary
Claresholm Centre, Claresholm
Michener Centre, Red Deer
Rosehaven, Camrose

A compulsory care order can only be granted where the Court is satisfied that the dependent adult is a danger to him or herself or others. The Court must consider a medical, psychological and social assessment of the dependent adult, establishing this danger. The Court must also be satisfied that confinement is both in the best interests of the dependent adult, and that it is the best way to treat the dependent adult and protect others.

If it is felt that the compulsory care order is no longer in the best interests of the dependent adult, the dependent adult, the guardian or any other interested person, may apply to the Court to have the order reviewed.

The Dependent Adults Act also allows a person in charge of a place of care to issue a compulsory care certificate. Such a certificate can be issued where a person in charge of a place of care is satisfied that a resident dependent adult presents a danger to himself or others. Again, there must be a written report of a physician or psychologist establishing this danger and again, it must be in the best interest of the dependent adult that the certificate be issued. Under a compulsory care certificate the dependent adult can be confined for a maximum of 72 hours. The person in charge of the place of care must then apply to the Court for a review of the certificate. The Court can issue a compulsory care order or it can refuse to do so if it is satisfied that further confinement is unnecessary.

CONCLUSION

The Dependent Adults Act was intended to provide a legal way to protect and assist persons who, by reason of the mental or physical disabilities, are potential victims of neglect or abuse. The Act has built into it certain safeguards to ensure that the dependent adult is taken care of in those areas where he or she requires assistance, and yet is encouraged to function independently to the greatest extent possible.

ADDITIONAL MATERIALS

1. BOOKS

APPOINTMENT OF A GUARDIAN UNDER THE DEPENDENT ADULTS ACT: REVIEW. By Joan Riddle, and Alberta Department of Social Services. Edmonton: The Department, 1986.

GUARDIANSHIP AND POWER OF ATTORNEY. In Resource News 12 (February 1988)

* Available from Legal Resource Centre, Faculty of Extension, University of Alberta, Edmonton, Alberta

2. PAMPHLETS

(a) DEPENDENT ADULTS. By Calgary Legal Guidance. Calgary: Calgary Legal Guidance, 1986. (Dial-a-Law).

(b) GUARDIANSHIP AND THE DEPENDENT ADULT. Edmonton: Alberta Social Services and Community Health, 1980.

10. WILLS AND ESTATES

There are many publications available which go into the intricacies of wills and estates, as well as many lawyers who specialize in the field. The following material is only a very basic introduction to this field.

What is a will?

The Merriam-Webster Dictionary defines a will as "a legal document in which a person declares to whom his possessions are to go after his death."

What is an estate?

An estate includes all the property, both real and personal, that you own. However, certain assets do not form part of an estate. For example, if you have an insurance policy which has a particular person (spouse or child, for example) named as beneficiary, this will not be part of the estate. In addition, jointly owned property to which the right of survivorship applies (see part 3 - on Ownership of Property) will not be part of the estate.

Is it necessary to have a will?

It is much cheaper and easier to distribute your estate if you have a will. Without a will, lengthy and expensive court proceedings may be necessary before the estate can be distributed to your heirs.

A will is also desirable because it ensures that your assets will pass to those friends and relatives whom you wish to benefit. In the absence of a will, your assets will be distributed by the rules of the Intestate Succession Act. Although this Act decides that the surviving relatives are to inherit according to a specified scheme, such a distribution may not be what you would have preferred (see What if my spouse did not leave a will?).

Who can make a will?

If you are 18 years of age or older and have testamentary capacity, you can make a will. Testamentary capacity means that you have the mental ability to understand the nature of the will and of the property which you are disposing. If you made a will, but you didn't have testamentary capacity when the will was executed, the will will be invalid. Your estate would then be distributed under the Intestate Succession Act or by a prior valid will, if one exists.

How do I make a will?

It is possible in Alberta to make a holograph will. This is a will done entirely in your own handwriting and signed by you. It does not need to be witnessed.

It is also possible to draft a more formal will by yourself. Sample forms can be obtained from stationary stores. However, care should be taken when using forms since they do not take your individual circumstances into consideration. Legal formalities must be followed when executing such wills, as these are not considered holograph wills requiring only your signature (see What are the legal formalities in executing a will?).

The assistance of a lawyer should be obtained if you have a large complex estate, as well as if you are involved in separation or divorce proceedings, or are contemplating marriage. In addition, you would be well advised to have a lawyer help in drafting a will where there may be or is in fact undue influence being exerted by family members. Indeed, because a will is an important and technical legal document, it is probably wise for everyone to have their wills drafted by a lawyer. The cost is minimal compared with the possible costs of straightening out problems caused by improperly drafted and executed wills.

What are the legal formalities in executing a will?

A will must be in writing. This means that it must be written, printed or typed. This also means that verbal declarations will not be considered part of a valid will.

You must sign a will at the end of the last page of the will. It is also a good practice to initial the bottom of each page of your will.

A will must be witnessed by two witnesses who were both present to see you sign the will. Both witnesses must sign the will in your presence and in the presence of each other.

A witness must be at least 18 years of age and cannot be a beneficiary or the spouse of a beneficiary under the will they are witnessing.

Can I dispose of my property any way I wish?

The general rule is that you have complete freedom to dispose of your assets in any way you wish. As with any rule, however, there are exceptions. The major exception to this rule in Alberta is found in the Family Relief Act. This Act provides that your dependents can apply to the court where you have not made adequate provision for them. A dependent includes the surviving spouse, any child under 18 years of age,

and any child over 18 years of age who is unable to earn a living because of some mental or physical disability. A dependent also includes your former spouse if there has not been a matrimonial property settlement pursuant to your divorce. However, in order for your former spouse to be entitled to lay claim to your estate, not more than two years can have elapsed since the divorce, and not more than six months can have elapsed since the probate of your will. This means that there is a possibility of two or more spouses and other dependents being entitled to share in your estate. All applications must be made within 6 months of probate. Also, The Dower Act may affect the matrimonial home property from being transferred according to your will. (see part 3 - Ownership of Property)

In addition to this main exception, there are many technical rules which govern the manner in which property may be transferred by a will. It is difficult to generalize in this area, so if you are concerned about any bequests you wish to make, you should consult a lawyer.

Do I have to leave anything to my adult children?

Unless the children are dependent children as defined above, you do not have to leave them anything in your will. The general rule that you can dispose of your assets in any manner you wish applies with respect to all non-dependent children. It makes no difference whether they are children of a first, second or even third marriage.

What happens if one of my beneficiaries cannot be located?

Your executor must make reasonable attempts to locate the beneficiaries named in your will. If he is unable to do so, he can approach the Public Trustee, who has the authority to deal with the property of missing persons.

What happens if one of my beneficiaries dies?

If one of your beneficiaries dies before you, you should change your will or provide in your will for that circumstance. If you don't, that beneficiary's gift becomes part of the residue or remainder of your estate. It will be distributed according to the terms of the residue clause in your will. A residue clause directs where property will go if it has not been given to specific beneficiaries. If your will does not have a residue clause, the deceased beneficiary's gift will be distributed by the terms of the Intestate Succession Act (see What if my spouse did not leave a will?).

What effect does separation and divorce have on our wills?

A will is still valid even when you and your spouse are separated or divorced. It is therefore important to revise your will once there has been a matrimonial property settlement. If the question of matrimonial

property is not resolved at the time of the divorce, your former spouse can still apply for a distribution of matrimonial property when you die, as long as the time limits have not expired (see Can I dispose of my property any way I wish?). This is so even if you did make a new will excluding your former spouse and other dependents. Your new will does not have the effect of removing your ex-spouse's rights under the Matrimonial Property Act.

How often should I change my will?

You should check over your will from time to time and consider changing it when important events occur. Such events include any births, deaths, marriages, or divorces in your immediate family, any change in the value of your property, the acquisition or disposal of property, the death of your executor, a change of residence to a different province or a different country, and any other significant events affecting your estate. If you marry, any existing will is rendered void unless specifically made in consideration of that marriage.

If you wish to change your will, you should see your lawyer to ensure it is properly changed. A will can be changed by executing an amendment called a codicil. This must be executed in the same way in which the will was executed. If the changes required are substantial, you may want to make a completely new will.

You should not change your will by striking out parts, adding parts or making any other alterations to it. However, should you do so, such changes have to be signed and witnessed in the same manner in which the will was executed. If they are not, they are not valid. It is therefore better to make any desired changes by a codicil or a new will.

How do I revoke my will?

You may revoke your will by physically destroying it. In order to be effective you must destroy the original will and you must intend to destroy it. It cannot be an accidental destruction. Once you destroy the will then you will die intestate unless you make a new will.

A will is also revoked by the execution of a new will which is either inconsistent with your previous will, or which expressly revokes your previous will. Most wills do contain a clause stating that you revoke all prior wills and codicils, but even without this clause the latest will governs. It is good practice when executing a new will to physically destroy prior wills and codicils, or at least write 'revoked' across them to prevent difficulties which could arise at your death as to whether a particular will is in fact the most recent, and therefore, valid will.

Marriage has the effect of revoking prior wills because the law presumes that you intend to leave your estate to your new spouse.

However, it is possible to make a will in contemplation of marriage as long as the will specifically names your intended spouse and states that it is made in contemplation of that specific marriage. Such a will is not revoked by the subsequent marriage.

Where should I keep my will?

The original of your will can be stored in the vault at your lawyer's office, a safety deposit box, or it can be filed in the Surrogate Court. A copy (unsigned or with your and your witnesses' names typed in quotation marks) should be kept at home with an indication as to where the original is kept. By keeping a copy you can also review it periodically to see if changes should be made.

What does the administration of the estate involve?

When you die, your estate must be administered. This is true whether or not you left a will. What happens when an estate is administered varies depending on the value and the complexity of the estate. However, there are certain basic things which must be done in the administration of any estate, regardless of size and complexity:

1. funeral and burial arrangements,
2. ascertaining the property, both real and personal,
3. ascertaining and paying the proper legal debts,
4. filing of income tax returns,
5. application for Letters Probate, if there is a will,
6. application for Letters of Administration, if there is no will, and
7. distribution of the estate to the beneficiaries.

How do I choose an executor?

The executor is the person responsible for administering your estate. The person you appoint to carry out this important function should be capable of competently performing the responsibilities of an executor. If your estate is small, often it is sufficient to appoint your spouse. However, in a larger, more complicated estate it may be wise to appoint a trust company or someone with experience in matters of real estate, taxation and investments. Generally lawyers will not act as executors, but restrict themselves to the legal matters involved in the administration of an estate.

You should obtain the consent of the proposed executor before the will is executed. Being appointed as executor, with all the attendant responsibilities, may be an unwelcome surprise.

It is possible to appoint more than one executor to act as joint executors. It is also possible, and indeed good practice, to name an

alternate executor to act in the event the first named executor has predeceased you or is unable or unwilling to be the executor when the time comes.

What happens when my spouse dies?

If you are the executor of your spouse's estate, you will be responsible for the administration of the estate. This involves a variety of duties including the immediate matter of making burial arrangements, and taking care of any immediate directions made in your spouse's will, for example, specific burial instructions or instructions relating to the immediate needs of dependents. You should also contact the lawyer who will be handling the legal matters in the administration of the estate in order that the application for probate of the will can be made. The lawyer will require your assistance in preparing an inventory of the assets and debts of the estate, as such an inventory is part of the application for probate.

If you are not the executor of your spouse's estate, although you will not be responsible for the administration of the estate, your assistance will be required in such things as locating the will, and providing any records that the executor and lawyer may need to carry out their responsibilities.

What if I have been left out of my spouse's will?

Your spouse, generally speaking, may leave his or her estate to anyone he or she wishes. However, you may apply to the Court, under The Family Relief Act, if your spouse has not made adequate provision for you (see Can I dispose of my property any way I wish?).

What if my spouse did not leave a will?

When someone dies without having left a will, they are said to have died intestate and their estate will be distributed according to a pre-determined scheme set out in the Intestate Succession Act. Under this Act, as the surviving spouse you are entitled to a fixed share of the estate - at the moment the fixed share is $40,000 - with the residue being divided between you and your children. Where you have no children or grandchildren, you are entitled to the entire estate. However, if your child or children have died leaving grandchildren, those grandchildren are entitled to the share of the estate to which their parent would have been entitled if living.

In short, the surviving spouse of a deceased person who has died without a will, is entitled to the first $40,000 of the deceased's estate. Anything beyond this amount will be divided between the surviving spouse and the children and grandchildren.

Do I have the right to inherit my common-law spouse's estate?

In a common law relationship, as surviving spouse you have no right to share in the estate of your spouse, unless he or she specifically named you in the will. If the will simply left things 'to my wife' or 'to my husband', as common law wife or husband you are not entitled to a distribution of the estate since these terms are taken to mean a legal wife or husband, whether or not there is in fact a legal wife or husband. Even where the will specifically names you, if there is a legal spouse, he or she will have the first claim on the estate.

In the absence of a will, the estate is distributed according to the Intestate Succession Act. Under this Act the estate is distributed to the next of kin - the legal spouse, legitimate children, parents, brothers and sisters and other relatives. Only after the claims of legitimate relatives have been met can a common law wife or husband make a claim on the estate. Such a claim could not be based on any right to inherit, but rather would have to be based on a legitimate debt or share in property purchased jointly with the deceased. (see Part 5 - "Who owns what in a common law relationship").

What taxes must be paid at death?

In Alberta, because there is no succession duty, the only tax which must be paid at death is federal income tax. This includes a tax on all types of income which accrued up to the death of the deceased taxpayer, plus income which the Income Tax Act deems the taxpayer to have received. More specifically, the taxable sources of income include

1. employment income,
2. property income,
3. business income,
4. income which would be received on the sale or the realization of such things as bonds or dividends, and
5. taxable capital gains which are deemed to arise at death if the deceased taxpayer owns any income producing property.

Once the gross income has been determined, the various allowable deductions are made to determine the taxable income of the deceased taxpayer.

ADDITIONAL MATERIALS

1. BOOKS

BEFORE YOU DIE: A THOUGHTFUL AND PRACTICAL GUIDE TO PLANNING FOR DEATH. By Leonard Knott. Toronto: Personal Library, 1982.

PROBATE GUIDE FOR ALBERTA: A STEP-BY-STEP GUIDE TO PROBATING AN ESTATE. By Cheryl Gottselig. 3rd. ed. 1987 (Self-Counsel Press).

WILLS FOR ALBERTA: HOW TO MAKE YOUR OWN WILL. By Cheryl Gottselig. 7th. ed. Vancouver: International Self-Counsel Press, 1987. (Self-Counsel Press).

2. PAMPHLETS

(a) Dial-a-Law Transcripts. Calgary: Calgary Legal Guidance, 1980. This series includes these titles:

Making a Will
Probate and the Executor
Why have a Will?

(b) WILLS, EXECUTORS, TRUSTS, AND TRUSTEES. By Montreal Trust. Edmonton: Montreal trust, 1987.

(c) WILLS AND ESTATES FOR ALBERTANS. By Alberta. Women's Secretariat. Edmonton: The Secretariat, 1987.

(d) IF YOU SHOULD DIE WITHOUT A WILL. By Montreal Trust. Edmonton: Montreal Trust, 1987.

(e) GUIDE TO PROBATE PROCEDURE. By Alberta. Women's Secretariat. Edmonton: The Secretariat, 1987.

3. AUDIO-VISUAL

WILLS. (videorecording). Calgary: Access, Alberta: 1987. (You and the Law, 10).

FARM ESTATE PLANNING: A FAMILY AFFAIR. (videorecording). By Alberta Department of Agriculture. Home Study Section. Edmonton: The Department, 1986.

WILLS AND ESTATES: KEEPING YOUR NETWORTH IN THE FAMILY. (videorecording.). Edmonton: Alberta Department of Consumer and Corporate Affairs, 1986. (Networth, 6).

11. ELDER ABUSE

Society has recently recognized a disturbing trend whereby the frailities of the elderly are exploited for the benefit of younger members and unscrupulous rogues of society. It has been dubbed "elder abuse" and while a complete elimination of such behaviour is impossible, there are legal mechanisms available which can relieve or hinder some of the effects of the abuse.

While the following general legal principles do not apply solely to senior citizens, they are more often applicable to elderly citizens.

What if I am forced to sign a contract I don't want?

Where you have been unduly influenced or placed under duress to enter into a contract, the obligations under that contract can be avoided if prompt action is taken.

Undue influence occurs in situations where you have placed a great deal of confidence in another individual, either because of the person's professional qualifications or close association with you. This person then uses his or her influence to pressure you to enter into the contract. As a result you are unable to make an independent decision about whether you wish to enter into the contract.

Duress is the situation whereby physical violence or imprisonment, either actual or threatened, against either you or your close family, has force you to enter into the contract.

Any action the other party may take to enforce such a contract can be prevented, thereby relieving you of your obligations under the contract. Any property or money you have already given may be recovered. In some instances undue influence is presumed but you may be required to prove undue influence or duress to obtain protection from the courts releasing you from your obligations under the contract.

A new area in the field of contract law is economic duress, which is becoming increasingly recognized as a defence to enforcement of contracts which people would not otherwise freely have entered into but for their severe economic difficulties. If the claim is accepted by the court, you can again be relieved of your obligations under the contract.

What if I have been pressured to make my will in a certain way?

If you have been unduly influenced in drafting your will, you should make the changes you wish at your first opportunity. See a lawyer alone, or if making a holograph will, do so when you are alone and can contemplate in peace as to how you wish your estate to be distributed.

Only you know how you want your estate dealt with; your will is an extremely important document and should not be entered into when heirs are pressing their demands upon you. (see part 10 Wills and Estates).

What if things are taken from me which I wish to hold until death?

The bequests made in your will are not required to be delivered to the beneficiaries before your death. You will speaks from death and no beneficiary is entitled to the property prior to that time without your consent.

Things taken from you without your consent is theft, and the matter can be dealt with through the proper authorities. There are also civil remedies available to recover property. Unfortunately, in cases where a close relative is involved, there is a presumption made that a gift was intended and this presumption will have to be over-come before the property will be returned to you.

What if I can't read English or am unable to fully understand?

If you have been convinced to sign a contract which you cannot fully understand, the courts will not always assist you. Your signature on a document presumes you understand and consent to all the terms. However, where it is clear that you cannot read, either because of blindness or illiteracy, and the terms have been improperly relayed to you, the court may allow a defense of non est factum to avoid the obligations under the contract. Some relief may also be possible based on a claim of unconscionable transaction, in relation to credit matters.

Can I do anything if I have been physically abused?

As with any other type of assault, charges may be laid under the Criminal Code. Also, a civil action can be brought to compensate for injuries suffered and expenses incurred because of the attack, by way of a claim for damages.

There are social agencies available which will provide shelter and assistance so that you can leave the premises where you are being abused. A call to Emergency Social Services or the Police will provide you are provided with these services.

What if my family fails to provide me with food and shelter?

Under the Maintenance Order Act, your spouse or children can be required to provide you with necessaries of food, clothing and shelter (see Part 5: Family).

ADDITIONAL MATERIALS

1. BOOKS

ABUSE OF THE ELDERLY: ISSUES AND ANNOTATED BIBLIOGRAPHY. By Benjamin Schlesinger and Rachel Schlesinger. Toronto: University of Toronto Press, 1988.

NURSING HOME NEGLIGENCE: A CASE COMMENT. In Resource News 12 (February, 1988).

- Available from Legal Resource Centre, Faculty of Extension, University of Alberta, Edmonton, Alberta

VICTIMIZATION AND FEAR OF CRIME AMONG THE ELDERLY. By Yves Brillon. Toronto: Butterworths, 1987. (Perspectives on Individual and Population Aging).

VIOLENCE AGAINST THE ELDERLY BY FAMILY MEMBERS: A LITERATURE REVIEW OF CURRENT KNOWLEDGE. By Wanda Haber-Kucharsky. Edmonton: Alberta. Department of Social Services and Community Health, Office for the Prevention of Family Violence, 1985.